

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

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Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 22 January 2007, at 4:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon Margaret NG (Chairman)
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LI Kwok-ying, MH, JP
- Members absent** : Hon MA Lik, GBS, JP (Deputy Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon James TO Kun-sun
- Public Officers attending** : Item IV
Judiciary Administration

Miss Emma LAU
Judiciary Administrator

Mr Augustine L S CHENG
Deputy Judiciary Administrator (Operations)
- Item V
The Administration

Department of Justice

Mr Stephen WONG
Deputy Solicitor General

Ms Kitty FUNG
Senior Government Counsel

**Attendance by
invitation** : Item V

Hong Kong Bar Association

Mr Osmond LAM

Ms Yvonne CHIU

The Law Society Working Party on Recovery Agents

Mr Ludwig S. W. NG
Chairman

Mr Patrick BURKE
Member

Ms Szwina S. K. PANG
Member

Mr Tommy K. M. WONG
Member

Mr Patrick MOSS
Secretary General

Mr Francis CHAN

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

**Staff in
attendance** : Mrs Eleanor CHOW
Senior Council Secretary (2)4

Miss Vivien POON
Council Secretary (2)3

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- I. Confirmation of minutes of meeting**
(LC Paper No. CB(2)887/06-07 and CB(2)889/06-07 - Minutes of meetings on
27 November and 12 December 2006)

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The minutes of the meetings held on 27 November and 12 December 2006 were confirmed.

II. Information paper issued since last meeting

(LC Paper Nos. CB(2)766/06-07(01) and (02) - Correspondence between the Panel and the Administration on "Review of the jurisdiction of the Office of the Ombudsman"

LC Paper No. CB(2)843/06-07(01) - The Bar Association's comments on the "Consultation Paper on Domicile Bill 2006" to the Administration

LC Paper No. CB(2)867/06-07 - Judicial Officers Recommendation Commission Report (2005)

LC Paper No. CB(2)877/06-07(01) - The Judiciary Administration's reply dated 15 January 2007 to the Law Society of Hong Kong on "Procedure to obtain physical possession of premises"

LC Paper No. CB(2)878/06-07(01) - Information relating to the use of official languages for conducting court proceedings and the performance of court interpreters provided by the Judiciary Administration)

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)891/06-07(01) - List of outstanding items for discussion

LC Paper No. CB(2)891/06-07(02) - List of items tentatively scheduled for discussion at Panel meetings in 2006-2007 session

LC Paper No. CB(2)891/06-07(03) - List of follow-up actions

LC Paper No. CB(2)765/06-07(01) - Paper provided by the Administration on "Juvenile justice system")

Meeting on 26 February 2007

3. Members agreed to discuss the following items at the meeting on 26 February 2007 -

(a) Criminal legal aid fees system - the item was proposed by the Administration; and

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- (b) Professional Indemnity Scheme of the Law Society - the Law Society had advised that it would make a short report on the progress of the Professional Indemnity Scheme Review Working Party.

Follow-up to the List of Outstanding Items for Discussion (the List)

4. The Chairman drew members' attention to the following items on the List. Members agreed as follows -

- (a) Juvenile Justice system (item 8 on the List)

Members noted that the Administration had provided a progress report on the issue (LC Paper No. CB(2)765/06-07(01)) and agreed that it should be asked to explain the position at a future meeting. Given that the issue straddled the portfolios of a number of bureaux including the Security Bureau, members agreed that the date of the meeting would be worked out with the relevant Panel chairmen.

- (b) Limited liability for professional practices (item 9 on the List)

Members noted that the Administration had decided that no further studies would be carried out into the proposals for limiting liability during the remainder of the Chief Executive's term of office. The Chairman considered that the proposal on Limited Liability Partnership (LLP), which was less complex than the issue of proportionate liability, could be dealt with first. Given that the election of the third term CE would be held in March 2007, the Administration should be asked to revisit the issue and revert to the Panel on the way forward for LLP preferably in April/May 2007.

(Post-meeting note: A letter was sent to the Secretary for Justice by the Clerk on 2 February 2007)

- (c) Review of the jurisdiction of the Office of the Ombudsman (item 16 on the List)

Members noted that the Administration was unable to discuss the item at the meeting in February 2007 as requested by the Panel. Members agreed to defer the discussion to the meeting in March 2007 and if this date was still not agreeable to the Administration, it should be asked to suggest a date for reverting to the Panel.

(Post-meeting note: A letter was sent to the Director of Administration by the Clerk on 23 January 2007. The Administration advised on 9 February 2007 that it would notify the Panel the timing for discussion when it was in a position to do so.)

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Non-Civil Service Contract (NCSC) staff

5. The Chairman said that the Panel on Public Service had recently discussed the employment situation of NCSC staff. 38 NCSC positions in the Department of Justice (DoJ) and a number of NCSC positions in the Judiciary were involved in work that should more appropriately be performed by civil servants. The Administration would review whether these positions would be converted into civil service posts. The Chairman expressed concern whether the employment of NCSC staff would affect the operation and service delivery of the DoJ and the Judiciary. She suggested and members agreed that the DoJ and the Judiciary Administration should be asked to provide information on the issue for the consideration of the Panel.

(Post-meeting note: A letter was sent to the Secretary for Justice and the Judiciary Administrator by the Clerk on 1 February 2007 respectively.)

IV. Transcript fees

(LC Paper No. CB(2)875/06-07(01) - Background brief prepared by the LegCo Secretariat on "Fees for transcripts and records of proceedings")

LC Paper No. CB(2)875/06-07(02) - Letter dated 15 January 2007 from the Judiciary Administration in response to a question raised by Hon Audrey EU at the meeting on 23 October 2006

LC Paper No. CB(2)875/06-07(03) - Paper provided by the Judiciary Administration on "Fees for transcript and record of proceedings")

The Judiciary's proposal

6. Judiciary Administrator (JA) briefed members on the Judiciary's proposal on fees for transcript and record of proceedings and developments since the Panel discussed the item in December 2005. JA highlighted the following salient points -

- (a) instead of adopting a single fee of \$85 per page across-the-board, fees would be set separately for English and Chinese transcripts from the Digital Audio Recording and Transcription Services (DARTS);
- (b) the charging basis for transcripts would be changed from "per page" to "per English word and per Chinese character". Adopting the cost recovery approach, the transcript fees would be set at 0.14 per English word and 0.10 per Chinese character. The proposed fees would translate into about \$46.20 per page of English transcript (an average of 330 words per page) and \$86 per page of Chinese transcript (an average of 860 characters per page);
- (c) at present, the fee of \$85 per page also applied to copies of DARTS transcripts. The Judiciary proposed to charge only the photocopying

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fee if the transcripts concerned had already been produced, and to allow parties to reproduce the transcript or its copy for the purposes of pursuing the relevant legal proceedings;

- (d) the existing fee at \$105 per hour of audio tape produced from DARTS would be revised to \$80 (per 60-minute audio tape of part thereof). In addition, record of proceedings on Compact Disc (CD) and Digital Versatile Disc (DVD) would be introduced. Proposed new fees were \$315 for CD (about 14 hours of recording or part thereof) and \$570 for DVD (about 98 hours of recording or part thereof); and
- (e) administrative costs would constitute about 10% of the fees under the revised fees structure, as opposed to the existing 15%.

7. JA added that the Law Society of Hong Kong (Law Society) had endorsed the proposal and the Hong Kong Bar Association had no comments. Both bodies hoped that the proposal could be implemented as soon as practicable, so that litigants would benefit from a more equitable fee charging basis and more affordable fees. Subject to the Panel's endorsement, the proposed directed/authorised/administrative fees for transcript and record of proceedings could be implemented with effect from 1 February 2007. As suggested by the Law Society, the Judiciary would review the charging basis for the fees, in particular those for CDs and DVDs, from time to time with a view to introducing fee reductions where feasible.

Issues to be pursued outside the scope of the proposal

8. JA advised members that in practice, transcripts in respect of criminal appeals were supplied free of charge to legally aided or unrepresented appellants. The Law Society had suggested that as a matter of principle, fees for all transcripts included in the appeal bundle should be waived, including cases where the appellant was not legally aided but was represented. As the suggestion involved a review of and amendments to the Criminal Appeal Rules, the Judiciary agreed that the proposal would be pursued outside the context of the present review exercise.

JA

Issues raised by members

Fees for transcript and record of proceedings

9. In response to Ms Emily LAU on the basis for reducing the transcript fee, JA explained that at present, the "absorption costing" method had been adopted as a basis for setting the transcript fee. In gist, the total production costs were spread evenly among all requests from different parties, i.e. for a copy transcribed directly from DARTS as well as subsequent photocopies. JA said that reduction in transcript fee was made possible as a result of the revised charging basis from "per page" to "per English word and per Chinese character", and the adoption of separate fees for English and Chinese transcripts. In further response to Ms LAU, Deputy Judiciary Administrator (Operations) (DJA (Operations)) supplemented that an estimation of the

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number of parties requesting for transcripts, including the original transcript from DARTS and all subsequent photocopies, was made based on past records.

10. In response to the Chairman, JA clarified that at present, each page of transcript was charged at \$85 regardless of the number of words/characters on a page. The revised rates would be set at \$0.14 per English word and \$0.10 per Chinese character. A full page of English and Chinese transcript would cost around \$46.20 (330 words) and \$86 (860 characters) respectively.

11. Ms Emily LAU enquired why the rate proposed for one English word was different from that for one Chinese character. JA responded that the costs charged by the DARTS contractor for an English word was slightly higher than that for a Chinese character. The proposed rates for each word/character had taken into account the contractor's charges and administrative costs.

12. The Chairman asked about the photocopying fee to be charged for DARTS transcripts. JA responded that the administrative fee of making such photocopies was \$1 per page.

13. Mr LI Kwok-ying sought clarification on whether the revised directed/authorised/administrative fees would apply to transcripts in respect of criminal appeals, the fee of which was currently prescribed at \$17 per page. JA clarified that the prescribed fee of \$17 per page, which covered many other documents other than relevant transcripts, would remain unchanged, until the fee was revised by way of legislative amendment. JA added that the Law Society had suggested that all transcripts included in the appeal bundle should be provided without charge. In the view of the Judiciary, it was necessary to consider the transcript fee in relation to other documents contained in the appeal bundle for criminal appeals. For the time being, she considered that it might be more appropriate to charge only the photocopying fee for such transcripts. In response to the Chairman, JA expected that the revised rate to be proposed after review would be lower than the existing rate.

14. In response to Mr LI, JA advised that the transcript would be provided in the language that was used in conducting the relevant court proceedings, and no translation would be provided for the transcript.

15. Mr LI further asked about the Judiciary's stance on the suggestion that the cost recovery principle should not apply to the production of transcript and record of proceedings, which should be treated as part of the court services and provided free of charge to court users.

16. JA responded that the Judiciary did not object to adopting a cost recovery approach in setting fees for transcript and record of proceedings. Otherwise, taxpayers would have to subsidise such costs. In principle, the court should be given a general power to waive, reduce or defer the fees in deserving cases, so that litigants' ability to pursue legal proceedings and appeals would not be prejudiced as a result of insufficient means to pay fees.

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17. Ms Miriam LAU pointed out that transcription service was not involved in the production of DARTS recording on CD or DVD, and the burning of CD/DVDs involved very little cost and time. She queried why the fees proposed for CD and DVD were so high using the cost recovery approach.

18. JA responded that the provision of record of proceedings on CD/DVD was a new proposal, and the fees charged would be subject to review as requested by the Law Society. The setting of fees for CD/DVD had taken into account the administrative costs incurred in processing such requests, e.g. the manpower required for selecting only certain parts of the proceedings for recording on CD/DVD and for checking whether the required parts of proceedings were recorded. Ms Miriam LAU remained unconvinced that the proposed fees for producing record of proceedings on CD/DVD were justified. She suggested that in addition to administrative costs, a standard fee should be adopted for audio tape/CD/DVD irrespective of the length of the recording.

19. In response to the Chairman, JA advised that revision of fees for record of proceedings, which were administrative fees, required the approval of the Secretary for Financial Services and the Treasury. It would be difficult for the Judiciary to revise its proposal at this stage and still meet the implementation target date of 1 February 2007.

20. The Chairman sought members' views on whether the proposed fees for audio tape/CD/DVD should be implemented as scheduled, to be followed by a review along the lines suggested by Ms Miriam LAU. She said that the alternative would be to defer the implementation pending such a review.

21. Ms Miriam LAU was in favour of implementing the proposed fees on 1 February 2007. Otherwise, a copy of the record of proceedings would only be available on audio tape at a fee of \$105 per hour.

22. Ms Emily LAU suggested that the Judiciary should implement the proposed fees for transcript and record of proceedings, which were supported by the legal professional bodies, on 1 February 2007, to be followed by a review of the fees for DARTS recording on audio tape/CD/DVD as soon as practicable. Members agreed.

JA

Waiver mechanism

23. Referring to paragraphs 11-12 of the Judiciary Administration's paper, the Chairman said that the proposal to introduce a waiver mechanism for civil appeals would necessitate legislative amendments. As the power and criteria for courts to waive transcript fees were prescribed in different statutory provisions, she requested JA to take the opportunity to rationalise the situation. JA responded that the Judiciary would consult the Department of Justice (DoJ) on how to proceed with the amendment exercise. The Chairman requested JA to expedite action in view of the time required for consultation with the DoJ and the need to safeguard access to justice, and to inform the Panel of further developments. JA agreed.

JA

Other issues

24. Ms Audrey EU referred to JA's letter in response to her query concerning the incident of a contractor being charged by the Independent Commission Against Corruption for conspiracy to defraud the Judiciary of the provision of transcription services, and reiterated her concern whether the incident would have any impact on the level of transcript fees proposed as the value of the contract might be over-estimated.

25. JA responded that the value of the contract was an estimated figure. The actual amount of money payable to the contractor would be based on the actual work done, i.e. the number of words/characters transcribed. Hence, the incident would not have any impact on the proposed level of transcript fees.

V. Recovery agents

(LC Paper No. CB(2)891/06-07(04) - Background brief prepared by the LegCo Secretariat on "Recovery agents")

LC Paper No. CB(2)891/06-07(05) - Paper provided by the Administration on "Recovery agents")

26. The Chairman welcomed representatives of the Hong Kong Bar Association and the Law Society of Hong Kong as well as Mr Francis CHAN to the meeting to give views on issues relating to recovery agents (RAs).

27. Deputy Solicitor General (DSG) introduced the Administration's paper which set out the actions taken in monitoring events to see whether enforcement action could be taken in respect of activities related to RAs, the recent developments in the United Kingdom (UK), and the Administration's position.

28. Mr Osmond LAM of the Bar Association said that Mr Anthony CHAN had already reflected the views of the Bar Association at the Panel meeting on 28 November 2005. The Bar Association had not changed its position since then. It was concerned that the Administration had not taken active steps to investigate into the activities of RAs.

29. Mr Ludwig S NG, Chairman of the Law Society Working Party on Recovery Agents, presented his views as follows -

- (a) given that the making of legislation to regulate RAs would take time, the most effective way to restrict RA activities was to step up public education. The effort made by the Administration in this respect was inadequate. Mr NG said that he had forwarded a promotional leaflet distributed by RAs to the Legal Aid Department (LAD) about two years ago. The leaflet contained misleading information such as approaching

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LAD for assistance was more costly than engaging RAs in recovering damages. He was disappointed that nothing had been done by the LAD so far. He suggested that the DoJ should, with the assistance of relevant departments, take the lead to step up measures to educate the public on the proper way to pursue claims for damages and the risks involved in using the services of RAs;

- (b) RAs did not provide value-added service or free service to accident victims. They charged 20% to 25% of the compensation recovered. They encroached on the interests of victims who were ignorant of their rights and entitlements in personal injury claims;
- (c) the judgment for the High Court case [HCMP2878/2004] (LC Paper No. CB(2)1380/05-06(01)) revealed how an accident victim's compensation could be substantially depleted by a consultant company, which was suspected to be involved in RA activities. In this case, the damages awarded to the victim, who had become mentally incapacitated after a traffic accident, was meant to be the only source of financial support for the rest of his life. With over \$800,000 paid to the so-called consultant company from the damages recovered, the victim's livelihood in the future could be jeopardized and could lead him to resort to social welfare. Mr NG asked whether the Administration was conducting an investigation into that case; and
- (d) he noted that conditional fees was a subject of consultation at the moment. It had been proposed that the lifting of the prohibition against the use of conditional fees by legal practitioners in certain types of civil litigation might appeal to accident victims who would have otherwise resorted to engaging not legally qualified RAs. As far as he was aware, the Law Society, the Bar Council and many legal practitioners did not support the proposal for conditional fees. In his view, the proposal was irrelevant to the issue of RAs.

30. Mr Patrick BURKE, Member of the Law Society Working Party on Recovery Agents, said that the Working Party had done some research to ascertain the extent of the problem of RAs. There were about 8 600 claims for personal injuries filed in the High Court and the District Court in 2004 and 2005. To his understanding, firms suspected to work for RAs were doing almost 30% of personal injury claims in Hong Kong. It seemed that the only proper way to deal with the problem was investigation by the Police. However, it appeared that there had been no proper investigation after a lapse of one year since the issue was last discussed by the Panel. Given that a "no win no fee" arrangement was a criminal offence in Hong Kong, the Administration should step up enforcement action against RAs. Mr BURKE pointed out that unlike the situation in Hong Kong, the RAs in UK did not take a percentage of damages from their clients. The problems about the UK practice were related to the aggressive marketing tactics of RAs.

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31. Mr Tommy K M WONG, Member of the Law Society Working Party on Recovery Agents, said that he had paid attention to the issue of RAs for more than a year and it did not appear to him that the Administration had stepped up public education. He pointed out that the activities of RAs amounted to maintenance and champerty, which were criminal offences in Hong Kong, as they assisted or encouraged a party to litigation and charged a share in the proceeds recovered from damages. Referring to paragraph 13 of the Administration's paper, he said that the Administration's position on whether the activities of RAs were illegal or otherwise was unclear.

32. Ms Szwina S K PANG, Member of the Law Society Working Party on Recovery Agents, said that since the issuance of a circular by the Law Society about the practice of RAs in May 2005, there were signs that RA activities had been tailing off. However, RA activities had recently revived as evidenced by advertisements on television and newspapers, and the number of cases involving RAs that had come to the attention of law firms. Yet, no prosecution action had been taken against RAs. Ms PANG further said that the Law Society Working Party on Recovery Agents and the Working Party on Conditional Fees had discussed the issue of RAs and considered that one of the possible ways to address the problem was to expand the scope of Supplementary Legal Aid Scheme (SLAS) to cover personal injury cases. If accident victims were eligible for legal aid, they could receive better legal service from qualified lawyers. However, the Administration's position in this respect was ambivalent.

33. Mr Patrick MOSS, Secretary General of the Law Society, said that the modus operandi of a number of RAs was that RAs purported to provide insurance for the claimants against having to pay their own legal costs in the event that they lost their case. The information that the Law Society had was that the insurance policy was issued by a company overseas and not by an authorised insurer in Hong Kong. The case had been referred to the DoJ and the Commissioner for Insurance for investigation. It appeared to him that neither of the parties could get to the bottom of the issue.

34. Mr Francis CHAN expressed regret that no progress had been made by the Administration since the issue was last discussed by the Panel in November 2005. He made the following points -

- (a) according to the Administration's paper, it needed to monitor the developments of (i) the investigation on suspected RA cases involving illegal activities, (ii) the UK law concerning RAs, and (iii) the consultation on conditional fees, before deciding the way forward. He found the Administration's approach illogical because irrespective of the developments of these events, the fact remained that maintenance and champerty were criminal offences in Hong Kong and the law should be enforced. The Administration should make clear its stance that it was against RA activities and educate the public accordingly; and

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- (b) the Administration had informed the Panel in November 2005 about the difficulty in taking prosecution action because few reports concerning RAs had been filed with the Police. He pointed out that many accident victims came from the middle and lower class and were unwilling to come forward to file a report with the Police. Despite this, he had convinced his client, Ms WAH, to file such a report with the Police in May 2006. However, the Police had not contacted Ms WAH since then. He wondered whether Ms WAH's case was one of the cases being investigated by the enforcement agencies at present. He questioned the efficiency of the Administration in tackling the issue of RAs given the lack of progress since the issue was last discussed by the Panel.

35. Mr Francis CHAN further said that he had obtained the consent of Ms WAH to disclose the details of her case to the Panel. Ms WAH had sought the assistance of a RA in claiming her damages for personal injury and the RA had referred her to a law firm. After the claim had been awarded, she became aware that it was illegal for the law firm to take a percentage of her compensation. The law firm had retained over \$100,000 from the compensation received as service fees charged to Ms WAH. Upon the advice of Mr CHAN that the contract entered into with the law firm was champertous and unenforceable, Ms WAH had requested the law firm to repay her. The law firm had refused and filed a law suit against her. Following the advice of Mr CHAN, Ms WAH had applied for legal aid and had passed the means test. A female lawyer of the LAD had advised Ms WAH that legal advice within the Government was divided over whether the activities of RAs were illegal. Ms WAH's application was subsequently refused as she failed to pass the merits test. At the end, Ms WAH settled the case out of the court. Mr CHAN expressed dissatisfaction about the position of the Administration on the legality of RAs.

36. Ms Miriam LAU said that apart from the implications of the prevalence of RAs on the legal profession, members' major concern was the need to safeguard public interest. Ms LAU said that the present measures taken by the Administration on public education were inadequate. She suggested that the Administration should consider using other more effective means, such as Announcements of Public Interest (APIs) and the television programme "Hong Kong Connection" to warn the public of the risks of using RAs.

37. Ms Audrey EU asked whether the Administration agreed that the conduct of RAs amounted to the offences of maintenance and champerty. If so, the Administration had the responsibility to impart a clear message to the relevant parties (i.e. the public, RAs, and law firms) to the effect that RA activities were illegal. In the case quoted by Mr Francis CHAN, the law firm concerned could be involved in aiding and abetting maintenance and champerty. Ms EU supported the use of APIs and the "Hong Kong Connection" programme to enhance public education. She added that preventive measures should be taken by the Administration to counteract RA activities at locations where accident victims were initially approached by RAs.

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38. The Chairman said that looking at the issue from the perspective of consumers, their legal right had to be protected. Somehow, users of RA services had the misconception that their damages could not be recovered easily in court. When approached by RAs, accident victims readily accepted RA services because they did not know about the risks involved. The Administration had the responsibility to instil confidence in the public about their legal right to claim damages. The Chairman further said that the Administration should also take the initiative to investigate suspected cases involving illegal RA activities such as the case of Ms WAH and the case referred by Mr NG. She assured the Administration that the two legal professional bodies would be more than willing to supply information relevant to such cases. The Chairman also considered that the LAD should clarify its stance on whether maintenance and champerty were criminal offences. She expressed concern that the attitude of the LAD would deter accident victims from seeking legal assistance.

39. In response to the views of deputations and members, DSG made the following points -

- (a) maintenance and champerty were criminal offences in Hong Kong. The maximum penalty for an indictable offence under section 101I of the Criminal Procedure Ordinance (Cap. 221) was imprisonment for seven years and a fine. Under the Legal Practitioners Ordinance and the Law Society's Guide to Professional Conduct, lawyers could not work on a "no win, no fee arrangement";
- (b) the Administration was investigating some 10 cases of RAs suspected of engaging in illegal activities. Pending the investigation, the Administration was not in a position to say whether these activities amounted to maintenance and champerty. The DoJ would consider bringing prosecution against the concerned parties if there was sufficient evidence to substantiate charges. The offences involved could be maintenance, champerty, or fraud, depending on the facts of individual cases. The Administration would provide a progress report on these cases within three to four weeks;
- (c) the Administration was aware that RAs approached accident victims in places such as hospitals and Labour Department offices. The Administration had stepped up measures to inform the public to beware of the touting activities of RAs and to warn them of the risk of RAs. These measures included, among others, establishing a no-staying zones in the Labour Department's offices at 10/F of Cheung Sha Wan Government Offices for the purpose of prohibiting RAs from staying there to wait for their target clients, and putting up posters and notices at premises of government departments and public body such as the LAD, Social Welfare Department (Traffic Accident Victims Assistance section), the Labour Department and hospitals under the Hospital Authority. Regarding the suggestion to enhance public education by

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using APIs and television programmes, DoJ would refer it to the relevant bureaux for follow up;

- (d) since June 2005, no further complaints had been lodged with the Consumer Council regarding RAs. The Consumer Council had commented that this could signify a demand for RA service by the general public. The Administration therefore had to strike a balance between the demand of the general public and the interest of the legal professional bodies in deciding the way forward; and
- (e) the Administration noted the point made by Mr MOSS in paragraph 33 above and was working on it.

40. Ms Miriam LAU said that the Administration should tackle the problem of RAs regardless of the number of complaints received because it was a question of right or wrong. The Administration had the responsibility to safeguard the interests and legal right of the general public.

41. Ms LAU further said that the Administration's paper had provided information on how RA activities were legalised in the UK. She stressed that any attempt by the Administration to legalise RA activities in Hong Kong was unacceptable, bearing in mind that RAs in Hong Kong, unlike those in the UK, took a percentage of the damages awarded to accident victims as service fees. Ms LAU pointed out that the clientele of RAs were those neither eligible to apply for legal aid nor able to afford the high legal costs. Given that claims for personal injuries had a high success rate and a reasonable good chance of recovering damages, the Administration should consider expanding the scope of SLAS to cover this type of cases. Ms LAU held the view that the proposal for conditional fees should not be pursued.

42. DSG responded that unlike the UK, maintenance and champerty were still offences in Hong Kong. Hence, the DoJ took the view that it was not necessary to introduce new legislation to regulate RA activities for the time being. DSG added that the Law Reform Commission had recommended in the Consultation Paper on Conditional Fees that consideration should be given to expanding the SLAS on a gradual incremental basis, by raising the financial eligibility limits and by increasing the types of cases which could be taken up by the SLAS. The consultation had just been completed and the Director of Administration was the subject officer.

43. The Chairman said that the Director of Administration had advised the Panel in October 2006 that it had reservations on the expansion of the SLAS. As the Panel would discuss the provision of legal aid services at the meeting in March 2007, she invited the legal professional bodies to give views to the Panel.

44. The Chairman further said that the Administration should conduct an analysis of the RA cases under investigation, including the amount of compensation that should be received by the victims and the amount of compensation that they had actually received. This would throw light on the amount of fees that had been charged by RAs.

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45. The Chairman suggested and members agreed that the Administration should make a report to the Panel at the meeting in April 2007 on the outcome of the cases under investigation and related issues.

46. There being no other business, the meeting ended at 6:34 pm.

Council Business Division 2
Legislative Council Secretariat
23 February 2007