

立法會
Legislative Council

LC Paper No. CB(2)2219/06-07
(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, 23 April 2007, at 4:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon Margaret NG (Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
- Member attending** : Dr Hon Fernando CHEUNG Chiu-hung
- Member absent** : Hon MA Lik, GBS, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon LI Kwok-ying, MH, JP
- Public Officers attending** : Item II
The Administration
Security Bureau
Mrs Apollonia LIU
Principal Assistant Secretary for Security
Miss Gillian LAM
Assistant Secretary for Security
Health, Welfare and Food Bureau
Mr Freely CHENG
Principal Assistant Secretary for Health, Welfare and Food
(Family)

Social Welfare Department

Mr CHEUNG Hing-wah
Assistant Director of Social Welfare
(Youth and Corrections)

Hong Kong Police Force

Mr MA Siu-yip
Chief Superintendent of Police
(Crime) (Support) (Acting)

Ms HO Yuen-ha, Irene
Superintendent of Police (Crime) (Support)

Item III

The Administration

Department of Justice

Mr Frank POON
Deputy Solicitor General (Acting)

Ms Kitty FUNG
Senior Government Counsel

**Attendance by
invitation** :

Item II

Youth Enhancement Scheme, Evangelical Lutheran
Church Social Service - HK

Mr HO Hin-ming
Regional Supervisor

Mr CHEUK Wing-hung
Senior Corporate Communication Officer

The Neighbourhood Advice-Action Council Eastern/ Wan
Chai District Youth Outreaching Social Work Team

Ms TSOI Ngan-ling
Centre Supervisor

Hong Kong Playground Association

Mr WAN Lap-man
Chief Development Officer (Strategy & Research)

Hong Kong Bar Association

Mr Clive Grossman SC

The Hong Kong Federation of Youth Groups

Miss WONG Sau-yee, Carrie
Unit in-charge/Youth Support Scheme

Hong Kong Family Welfare Society

Ms Cindy LEUNG
PSW

The Hong Kong Council of Social Service

Mr Ken CHAN
Chief Officer

Ms Klare CHAN
Officer

The Hong Kong Committee on Children's Rights

Mr Thomas J MULVEY

Item III

Hong Kong Bar Association

Mr Anthony CHAN SC

Mr Newman LAM

The Law Society of Hong Kong

Mr Ludwig S. W. NG
Chairman of the Law Society Working Party of Recovery
Agents

Mr Tommy K M WONG
Member of the Law Society Working Party of Recovery
Agents

Mr Patrick BURKE
Member of the Law Society Working Party of Recovery
Agents

Mr Francis CHAN
Messrs Or, Ng and Chan

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

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

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Miss Vivien POON
Council Secretary (2)3

Mrs Fanny TSANG
Legislative Assistant (2)3

Action

I. Items for discussion at the next meeting

(LC Paper No. CB(2)1631/06-07(01) - List of outstanding items for discussion

LC Paper No. CB(2)1631/06-07(02) - List of items tentatively scheduled for discussion at Panel meetings in 2006 - 2007 session

LC Paper No. CB(2)1631/06-07(03) - List of follow-up actions)

Members agreed that the following items would be discussed at the next meeting on 28 May 2007 -

- (a) Budgetary arrangement for the Judiciary ; and
- (b) Reform of the law of arbitration.

2. The Chairman referred to the visit paid to the Small Claims Tribunal on 27 March 2007 and suggested that the Judiciary should be requested to brief the Panel, at a suitable time, on the following issues -

- (a) review of the operation of the Small Claims Tribunal ; and
- (b) improvements for accommodation for the Small Claims Tribunal and other levels of court.

(Post-meeting note : A letter was sent to the Judiciary Administrator on 3 May 2007.)

Action

II. Juvenile justice system

(LC Paper No. CB(2)1618/06-07(01) - Background brief prepared by the LegCo Secretariat

LC Paper No. CB(2)2508/04-05(01) - Administration's paper on "Enhanced Support Measures for Unruly Children and Young Offenders" dated August 2005

LC Paper No. CB(2)765/06-07(01) - Administration's paper on "Restorative Justice for Juvenile Offenders" dated December 2006

LC Paper No. CB(2)1618/06-07(02) - Administration's paper on "Restorative Justice for Juvenile Offenders : Victim Participation" dated April 2007

LC Paper No. CB(2)1660/06-07(01) - submission from the Hong Kong Committee on Children's Right

LC Paper No. CB(2)1697/06-07(01) - submission and a report on the effectiveness of victim offender mediation from the Evangelical Lutheran Church Social Service of Hong Kong

LC Paper No. CB(2)1697/06-07(02) - submission from the Hong Kong Playground Association

LC Paper No. CB(2)1697/06-07(03) - submission from the Hong Kong Council of Social Service)

3. The Chairman welcomed representatives of the deputations and the Administration to the meeting. She said that the purpose of the meeting was to receive views on juvenile justice system.

Briefing by the Administration

4. Principal Assistant Secretary for Security (PAS for S) said that the Administration had provided three papers on the subject. The first paper dated August 2005 reported on the progress and effectiveness of the enhanced support measures introduced by the Administration since October 2003 targeting at unruly children and young offenders. The second paper dated December 2006 reported on the progress made in the review of the proposal to introduce the principles and practices of restorative justice in dealing with juvenile offenders. The third paper dated April 2007 reported on the outcome of the Administration's consideration of whether to introduce some form of victim participation on top of existing measures in the criminal justice system for handling juvenile offenders.

5. PAS for S briefed members on the third paper. She said that many elements and practices of the existing measures in handling juvenile offenders in Hong Kong

Action

were similar to those underlying restorative justice practised overseas. The main element absent was perhaps victim participation. The victim participation process sought to address the emotional needs and tangible losses of a victim, and at the same time allow a young offender to learn how his behaviour had adversely affected others and hold him accountable for his misdeeds, thus facilitating his rehabilitation. There was, however, a lack of sufficient empirical proof in overseas jurisdictions demonstrating the long-term positive effects of victim participation. Taking into account the various factors set out in the paper, the Administration considered that in Hong Kong's context, possible extra benefits that victim participation in the criminal justice system might bring on top of the existing measures were not apparent. It did not consider it necessary to introduce the victim participation process into Hong Kong.

Views of deputations

6. Mr HO Hin-ming of the Youth Enhancement Scheme of the Evangelical Lutheran Church Social Service of Hong Kong (ELCSS) presented his views as set out in the paper (LC Paper No. CB(2)1697/06-07(01)). The ELCSS also provided a report on the effectiveness of victim offender mediation for the consideration of the Panel. The report cited successful practices of victim offender mediation in overseas jurisdictions and analysed the effectiveness of the 19 mediation cases involving victim participation under the Police Superintendent's Discretion Scheme (PSDS) between 1 September 2005 and 30 August 2006. Mr HO expressed support for the victim participation process as it would address the emotional needs of victims and young offenders.

7. Ms TSOI Ngan-ling of the Neighbourhood Advice-Action Council Eastern/Wan Chai District Youth Outreaching Social Work Team said that some of the young offenders were themselves victims of a previous encounter. As their emotional needs had not been addressed when victimised, they had inflicted the same harm to other persons. While they felt genuinely remorseful for the harm they had done to others, there was no avenue for them to apologise to the victims under the existing system. Ms TSOI expressed support for the victim participation process.

8. Mr WAN Lap-man of the Hong Kong Playground Association (HKPA) presented his views as set out in the paper (LC Paper No. CB(2)1697/06-07(02)). He said that juvenile offenders should be diverted from the court where possible. He expressed support for the Family Conference (FC) scheme under the PSDS, which brought together the cautioned juveniles, their family members as well as professionals from relevant Government bureaux and departments (e.g. the Education and Manpower Bureau (EMB) and the Social Welfare Department (SWD)) and Non-Government Organisations (NGOs) to assess the needs of the juveniles. Through joint efforts, the key workers of the FC scheme drew up follow-up plans to help the rehabilitation of young offenders. Mr WAN advocated that there should be proper follow-ups after a FC. He also expressed concern about the measures to help unruly children under the age of 10. Referring to the Youth Information Services Leaflet distributed to unruly children and their parents, he suggested that a letter of

Action

consent should be attached to the Leaflet. With the consent of offenders' parents, the Police could pass relevant information to NGOs for them to proactively follow up these cases.

9. Mr Ken CHAN of the Hong Kong Council of Social Service (HKCCS) presented his views as set out the paper (LC Paper No. CB(2)1697/06-07(03)). In gist, he considered that the existing diversionary measures alternative to prosecution of juvenile offenders should be enhanced. Mr CHAN urged the Administration to conduct a comprehensive review on the juvenile justice system. He also requested the Administration to provide statistics relating to young offenders as specified in paragraph 4 of HKCCS's submission.

10. Ms Cindy LEUNG of the Hong Kong Family Welfare Society said that during the FC pilot period from October 2003 to September 2004, 242 cases under the PSDS fitted the criteria for FC but only 44 FCs were convened. In her view, more FCs should be conducted. She pointed out that mediation between victims and young offenders was found to be effective in schools. The Administration should explore the feasibility of developing this restorative measure instead of shelving it.

11. Miss Carrie WONG of the Hong Kong Federation of Youth Groups (HKFYG) said that she was the Unit In-charge of the Youth Support Scheme in Tuen Mun, Kwai Tsing and Tung Chung. The Unit provided youth support services to cases referred by the Police under the PSDS since October 1994. She made the following points relating to the FC scheme -

- (a) the Unit had convened 18 FCs since the implementation of the FC pilot scheme, 11 of which fell within the pilot period. The number of FCs convened had decreased to three in 2005 and one in 2006. The number had surged to three in 2007 when the effectiveness of FC was being assessed;
- (b) given that there was a lack of data between 2005 and 2007, one could not analyse the reasons for the decrease in the number of FCs. It would be useful if the Administration could provide information on the number of juveniles who had been given the second or further caution under the PSDS, the number of such cases while fitted the criteria for convening FCs, and the number of cases for which parental consent had been obtained for convening FCs, etc.;
- (c) the need for convening a FC for a particular case was currently assessed by the Police. Miss WONG queried the appropriateness of delegating such power to the Police and requested the Administration to consider extending the power to NGOs which had been dedicated to handle cases referred by the Police under the PSDS;
- (d) a FC could not be convened without the consent of parents/guardian. To ensure co-operation from the juvenile's family, consideration could

Action

be given to making it a requirement for juveniles under the PSDS who had been cautioned for a second time or more to attend a FC, subject to the recommendation of the SWD; and

- (e) HKFYG recognised the merits of continuing with the FC for needy juveniles. FC provided a platform for key workers of the FC scheme to work out a follow-up plan for young offenders, help strengthen communication and co-ordination among Government departments and NGOs, and expedite delivery of support services to young offenders. As to whether the scheme should be extended to unruly children under 10, HKFYG held the view that the subject could be further discussed, as other measures to enhance assistance to unruly children should also be considered.

12. Mr Clive Grossman of the Hong Kong Bar Association said that the Bar Association was in favour of using creative and innovative measures to deal with juveniles. He was disappointed at the lack of participation from the Department of Justice (DoJ) and the Judiciary. He pointed out that the subject involved juvenile crimes and the justice system on which the Judiciary and the DoJ should give their input. He made the following points -

- (a) the magistrates were the ones to deal with juvenile crimes. As they were in the front-line, they could contribute positively on how the subject should be dealt with;
- (b) the Police Superintendent should not be the sole arbiter on whether or not a juvenile should go to court. If a matter was outside the scope of the Police Superintendent, or the Police Superintendent decided not to exercise discretion, then the case would be in the hands of the DoJ. The DoJ would usually assign that type of cases to a prosecutor at the lower level who was likely to go forward with a trial. The decision so made might not be in the best interests of the juvenile; and
- (c) on the Administration's comment that there was insufficient empirical proof in overseas jurisdictions demonstrating the long-term positive effects of victim participation, Mr Grossman pointed out that overseas jurisdictions might have yet to come up with any long term studies. It would be a surprise if countries such as Canada, the United States and in Europe had no reports on alternative ways to deal with juveniles. Consideration should be given to refining the victim participation scheme and exploring measures adopted by overseas countries in handling young offenders.

13. Mr Thomas J MULVEY of the Hong Kong Committee on Children's Right (HKCCR) presented his views as set out in the paper (LC Paper No. CB(2)1660/06-07(01)). HKCCR held the view that it would be in the best interests of children to raise the minimum age of criminal responsibility to 14. The United

Action

Nations Committee on the Rights of the Child had expressed concern in its Concluding Observations made in 2005 that despite the raising of the minimum age of criminal responsibility in the HKSAR, the age of 10 years was too low.

Discussion

14. Dr Fernando CHEUNG said that diversionary measures should be put in place to avoid criminalising the acts of unruly children and young offenders. He made the following points -

- (a) for Asian countries such as China, Taiwan, Macau and Japan, the minimum age of criminal responsibility was 14 - 16. He requested the Administration to review the minimum age of criminal responsibility;
- (b) he asked the Administration to consider making it a requirement for young offenders, who had been cautioned for a second time or more under the PSDS and met the criteria for FC, to attend FC. He also requested the Administration to allow NGOs to invoke the FC mechanism, in addition to the Police and the SWD; and
- (c) the Administration should consider conducting a comprehensive review on the juvenile justice system.

15. PAS for S said that the support measures targeting at unruly children and young offenders implemented by the Administration sought to provide alternatives to prosecution, the direction of which was the same as that suggested by members, i.e. to avoid early criminalization. In response to the depositions and members, PAS for S made the following points -

Existing measures in handling juvenile offenders

- (a) at present, Hong Kong had a number of measures in place for handling young offenders. If the offence was of a less serious nature, a police officer of the rank of Superintendent or above could caution the juvenile under the PSDS. After administering the caution, the Police Superintendent would assess if any referrals for follow up services were required. These might take the form of post-caution visits by the Police Juvenile Protection Section (JPS) on the juvenile offender and/or referral to the SWD, the EMB and/or NGOs running the Community Support Service Scheme (CSSS), as appropriate;
- (b) the Administration had set up an inter-departmental group to study the issue of restorative juvenile justice, of which the DoJ was also a member. The current position as set out in the paper presented to the Panel represented the view of the Administration as a whole. As set out in the second paper provided by the Administration, where the PSDS could not apply to a young offender and prosecution became inevitable, DoJ

Action

could invoke the “Offering No Evidence” bind-over arrangement after prosecution but before sentencing. The arrangement was not commonly used mainly due to the availability of PSDS as an alternative but it was a form of preventive justice which allowed the juvenile defendant to avoid conviction and criminal record;

Adm

- (c) she would provide the relevant statistics as requested by some deputations after the meeting. As a quick reference, she reported that in 2006, the number of juveniles arrested between ages 10 and 17 was 6 891; 2 774 juveniles were cautioned under the PSDS; and the Police made some 1 480 referrals to the JPS aftercare service, 2 400 referrals to the CSSS run by the SWD, and over 30 referrals to the SWD and EMB;

Family Conference

- (d) the FC scheme was operated on a voluntary basis for juveniles aged 10 to below 18 and with the consent of parents/guardians of the juveniles. In the event that an FC was considered necessary after assessment, the Police would make the best effort to encourage participation of family members of the juvenile offenders. Given that there were many support measures other than FC and they were also effective, the Administration did not consider it necessary to make it a mandatory requirement for young offenders and their parents/guardians to attend FCs;
- (e) as regards the concerns of some deputations that only a few FCs had been convened, this was because alternative support measures were available for handling young offenders. The feedback from the Police was that FC was not always necessary as the SWD, NGOs and social workers in schools were providing necessary follow-up services;
- (f) feedbacks from stakeholders, namely parents, the Police, key workers of the FC scheme and NGOs, were in support of the spirit of the FC mechanism. Having regard to the experiences gained, the Administration was in support of extending the FC mechanism to unruly children under 10;

Victim participation

- (g) some deputations expressed the view that victim participation was a useful means to address the emotional needs of victims and young offenders. The Administration recognised that the involvement of victims might be considered in certain highly selective circumstances. Indeed, there was some degree of victim participation in the handling of selected cases involving minor unruly behaviour of students by school authorities, with fellow students as victims. However, bringing together fellow students for reconciliation was obviously very different

Action

from adopting victim participation in the formal criminal justice system. The Administration considered that a cautious approach should be adopted;

- (h) some deputations made reference to the successful overseas practices on restorative justice system involving victim participation. In her view, it was not appropriate to compare the effectiveness of a restorative justice system with a criminal justice system, as the former was operated on a voluntary basis. Victims participated in the scheme voluntarily or offenders were specifically selected to participate in a specific context. In such highly selective cases, the participants would have a greater tendency to comment positively on the scheme. Therefore, careful consideration must be given when looking at those success figures;

Minimum age of criminal responsibility

- (i) the Administration had explained to the Bills Committee in 2003 why the minimum age of criminal responsibility should be set at 10. Since its implementation, the number of young offenders between the age of 10 and 11, 12 and 17 had remained quite stable. On the other hand, the number of unruly children between seven and nine years of age had increased from some 100 in 2004 to over 200 in 2006. The increase in numbers could be due to two reasons. First, some of the services, such as the JPS aftercare service, had been extended to unruly children below the age of 10, resulting in more cases of unruly behaviour coming to the Police's attention. Second, there was also the possibility that raising the minimum age of criminal responsibility from seven to 10 years of age had resulted in more offences committed by this group of children as they were no longer criminally liable. The Administration would continue to monitor the trend of crimes committed by different age groups of youngsters; and

Review on Juvenile justice system

- (j) in response to the recommendations of the Subcommittee on Juvenile Justice System, the Administration had reported on the effectiveness of the enhanced support measures for unruly children introduced by the Administration since October 2003, and the outcome of the review on the development of a new restorative juvenile justice system. While the Administration would continue to monitor the effectiveness of the support measures, it did not have any plan to conduct a large-scale review on the juvenile justice system at this stage.

16. Mr Ken CHAN of HKCSS pointed out that the Law Reform Commission (LRC), in its Report on "Minimum Age of Criminal Responsibility in Hong Kong", had recommended, among other things, that the Administration should conduct a general review on the juvenile justice system in Hong Kong. Since the

Action

Administration had declined to do so, he asked whether the Administration considered the LRC's recommendation inappropriate. He said that apart from restorative measures, the Administration should also provide information on any other new measures alternative to prosecution to help unruly children and young offenders.

17. Ms Emily LAU expressed support for a review to be conducted on the minimum age of criminal responsibility. She asked about the differences between FC and restorative justice measures.

18. PAS for S explained that FC involved the participation of cautioned juveniles, their family members, the Police, SWD, EMB and NGOs to devise follow up plans for offending juveniles. Restorative measures, on the other hand, usually involved all the above parties as well as victims. At this stage, the Administration would not seek to introduce victim participation into the criminal justice system.

19. Ms Emily LAU asked the deputations whether the existing measures in the criminal justice system of Hong Kong without the element of victim participation was considered to be effective, and whether the FC scheme could have served the purpose of restorative justice practised overseas.

20. Mr HO Hin-ming and Mr CHEUK Wing-hung of ELCSS said that the FC system implemented in Hong Kong was based on family participation and was punitive in nature, while the one practised in overseas was restorative in nature. The latter sought to repair the relationship between the victim and the offender by encouraging their participation. Although victim participation was not introduced into the criminal justice system, attempts had been made to apply the element of victim participation in some cases under the PSDS. The experience gained by front-line social workers from the 19 cases covered in the report on victim offender mediation was that counselling to an offender or a victim alone could not relieve his emotional stress. Their emotional needs could be satisfied only with the help of the opposing party, such as an apology by one party and acceptance of an apology by another party in person. The process facilitated the rehabilitation of the young offenders and restored his relationship with victims.

21. Miss Carrie WONG of HKFYG said that under the existing practice, front-line social workers who saw the need for convening a FC for a particular case had to seek assistance from the Police and SWD. She doubted whether the Police was the appropriate party to invoke the FC mechanism, given that front-line policemen were quite mobile and might not be aware of the needs of young offenders and the willingness of parents to participate in FCs. Miss WONG disagreed with the Administration's view that cases followed up by the SWD or NGOs would obviate the need for FC. She pointed out that as those cases did not involve co-ordination among social workers and Government departments, the needs of young offenders might be overlooked. In her view, the need for FC for a particular case should preferably be assessed by the SWD.

Action

22. Dr Fernando CHEUNG asked whether the Administration would consider the proposal of HKPA to attach a letter of consent to the Youth Information Services Leaflet, to facilitate NGOs to follow up these cases.

23. Principal Assistant Secretary for Health, Welfare and Food (Family) said that a review on the effectiveness of the FC had been conducted in 2005. The Administration would continue to exchange views with stakeholders on how to improve the mechanism. The suggestion to attach a letter of consent to the Youth Information Services Leaflet would be considered in that context.

24. The Chairman recalled that when the Bills Committee on Juvenile Offenders (Amendment) Bill 2001 discussed the minimum age of criminal responsibility, some members were in favour of raising it to 12. The Administration had responded that the issue would be reviewed in the context of a consultancy study commissioned to the City University of Hong Kong on measures adopted by overseas countries in handling unruly children. The Consultancy Report subsequently recommended six options on diversionary measures alternative to prosecution of children and young persons and brought to Members' attention a new juvenile justice system incorporating the principles of practices of restorative justice. The LegCo had then formed a Subcommittee on Juvenile Justice System in November 2003 to follow up the relevant issues. After a lapse of three years, the Chairman expressed disappointment at the Administration's response that -

- (a) only a small number of FCs had been conducted;
- (b) it would not review the minimum age of criminal responsibility;
- (c) it did not intend to introduce victim participation into the juvenile justice system; and
- (d) it would not conduct a comprehensive review on the juvenile justice system.

The Chairman said that the Panel should discuss the way forward on the issue at a future meeting.

25. The Chairman thanked the deputations for attending the meeting. She said that the information provided by the Administration (paragraphs 9 and 11(b) refer) would be forwarded to the deputations upon receipt.

III. Recovery agents

(LC Paper No. CB(2)1631/06-07(04) - Background brief prepared by the LegCo Secretariat

LC Paper No. CB(2)1631/06-07(05) - Administration's paper on "Recovery agents")

Action

26. Acting Deputy Solicitor General (Acting DSG) of the Department of Justice (DoJ) briefed members on the recent developments in areas of work relating to public education, possible prosecution and possible legislation to protect victims from the activities of recovery agents (RAs).

27. On public education, Acting DSG advised members of the measures taken or being considered to increase public awareness of the risks of the activities of RAs -

- (a) the Administration had made arrangements for a radio Announcement of Public Interest (API) to be broadcast in about two months' time;
- (b) subject to financial considerations, the Administration was exploring the feasibility of the production of a television API (at a cost of about \$300,000 - \$400,000); and
- (c) the Administration was also exploring the possibility of alerting the public about the activities of RAs in the "Police Magazine" programme which was broadcast on the television.

28. In response to the Chairman on the possibility of introducing legislation for the purpose of protecting the interests of the public against exploitation by RAs, Acting DSG said that the Administration had discussed the matter with the two legal professional bodies. The preliminary thinking was that the Administration could consider legislating to the effect that the contracts entered into by RAs and accident victims were illegal and unenforceable. However, in view of the implications on other types of contracts, the proposed legislative amendment would only apply to cases of personal injuries.

29. In response to the Chairman on possible prosecution, Acting DSG said that -

- (a) seven cases were under investigation by the Police. Four of these cases had been referred to the Police for more than one year and had been singled out for active investigation;
- (b) the Police had encountered difficulties in gathering documentary evidence during the investigations. In some cases, victims declined to assist in the investigations; and
- (c) the involvement of overseas insurance companies had also complicated the investigation as the information on such companies was difficult to obtain. In this connection, the Interpol and the Commissioner for Insurance had been requested to assist.

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

Action

- (a) the Law Society welcomed the public education initiatives proposed by the Administration and hoped that the Law Society would be invited to provide input on the content of the APIs;
- (b) it would be worthwhile to launch television APIs as the costs involved was comparatively lower than the financial loss of victims who had been exploited by RAs. For instance, in the High Court case [HCMP2878/2004], an accident victim had paid some \$800,000 from the damages recovered to a consultant company suspected to be involved in RA activities. Accident victims who paid exorbitant fees to RAs and faced financial hardship might have to rely on social welfare. The financial burden would ultimately be shouldered by the Government;
- (c) the Court of Final Appeal confirmed in a recent commercial dispute case that champerty was illegal in Hong Kong. Hence, the champertous activities of RAs should be deemed as illegal;
- (d) RAs had continued to place advertisements on television and websites and some of which allegedly contained photographs of LegCo Members. However, the Government had not intervened. He suggested that the Police should be invited to brief members on the enforcement actions taken when the item of RAs was next discussed by the Panel; and
- (e) DoJ's paper had mentioned that the recommendations of the Law Reform Commission (LRC) on the issue of conditional fees might have a bearing on the issue of RAs. The two legal professional bodies had objected to the proposed conditional fee regime. Hence, there was no need to await the outcome of the LRC's consultation before actions were taken to tackle the issue of RAs. Rather, it would be more desirable to explore the feasibility of expanding the scope of the Supplementary Legal Aid Scheme to cover personal injury cases.

31. Mr Anthony CHAN of the Hong Kong Bar Association echoed the view of Mr Ludwig NG that enforcement measures against the activities of RAs should be stepped up. He said that it was the consensus of the DoJ and the two branches of the legal profession that the activities of RAs were illegal. In previous discussions with the Administration, the legal profession had suggested the deployment of undercover agents to assist the Police to gather evidence for the purpose of instituting prosecution proceedings. He pointed out that prosecution would be a very effective means to educate the public about illegal activities of RAs.

32. Mr Francis CHAN suggested that the Administration should issue guidelines to the media about the handling of advertisements relating to RAs which engaged in illegal activities. He concurred with Mr Ludwig NG that the Police should brief the Panel on the progress of enforcement actions taken against RAs.

Action

33. The Chairman and Ms Emily LAU said that little progress had been made in terms of the Administration's three-pronged approach since the issue was last discussed in January 2007.

Reps of
legal
bodies
present

34. Ms Emily LAU said that the Administration had the responsibility to impart a clear message to the public that RA activities were illegal and persons engaging in such activities would be criminally liable. The Administration should consider introducing legislation if the Police had encountered difficulties in enforcement under the existing law. Ms LAU considered it inappropriate for the Administration to issue guidelines to the media. She requested the representatives of the legal professional bodies present to provide to the Panel and the Administration copies of the advertisements they had referred to earlier on at the meeting.

Admin

35. Acting DSG responded that maintenance and champerty were criminal offences in Hong Kong and the maximum penalty for the offences was seven years' imprisonment and a fine. The APIs, to be broadcast for a period of several months, would disseminate a clear message to that effect. He would follow up with the Police upon receipt of the relevant details of the advertisements. He commented that some of the advertisements were subtle and it might not be easy to uncover evidence of criminal acts.

Admin

36. The Chairman said that some advertisements were blatant and should be investigated into. She requested the Administration to report to the Panel on further developments relating to the issue of RAs and to provide information on the seven cases under investigation by the Police. Upon receipt of the information, the Panel would send it to the legal professional bodies and decide whether another meeting should be held.

37. There being no other business, the meeting ended at 6:37 pm.