

立法會
Legislative Council

LC Paper No. CB(2)673/07-08
(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, 26 November 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 (Deputy Chairman)
Hon James TO Kun-sun
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LI Kwok-ying, MH, JP
- Public Officers attending** : Item V
Department of Justice
Mr Frank POON
Deputy Solicitor General (General) (Acting)
Mr Michael SCOTT
Senior Assistant Solicitor General
Ms Stella CHAN
Senior Government Counsel (Acting)
- Item VI
Department of Justice
Ms Susie HO
Director of Administration & Development
Mr John READING, SC
Deputy Director of Public Prosecutions
- 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

Action

I. Matters arising from the meeting on 11 October 2007

Election of Deputy Chairman

The Chairman called for nominations for the deputy chairmanship of the Panel. Mr Martin LEE was nominated by Ms Audrey EU and the nomination was seconded by Ms Emily LAU. The Chairman said that Mr Martin LEE, who was not at present at that juncture, had earlier informed her that he would accept the nomination.

2. As there was no other nomination, the Chairman declared Mr Martin LEE elected as the Deputy Chairman of the Panel for the 2007-2008 session.

II. Confirmation of minutes of meeting

(LC Paper No. CB(2)402/07-08 - Minutes of meeting on 22 October 2007)

3. The minutes of the meeting held on 22 October 2007 were confirmed.

III. Information papers issued since last meeting

Revised Proposals for Amendments to Subsidiary Legislation under the Civil Justice Reform (CJR) provided by the Steering Committee on CJR
(LC Paper No. CB(2)139/07-08)

4. Members noted that the above paper had been issued to the Panel.

Administration's letter dated 15 November 2007 on "2007 Annual Review of Financial Eligibility Limits of Legal Aid Applicants"
(LC Paper No. CB(2)367/07-08(01))

5. The Chairman informed members that the Administration had proposed to adjust the financial eligibility limits upward by 2.1% for the Ordinary Legal Aid Scheme and the Supplementary Legal Aid Scheme to reflect the change in CPI(C) during July 2006 to July 2007. The Administration had given notice on 21 November 2007 to move a motion at the Council meeting on 12 December 2007 to amend the limits set out in the Legal Aid Ordinance. The House Committee would consider at its meeting on 30 November 2007 whether to set up a subcommittee to study the motion. In response to the Chairman, members agreed that it was not necessary to discuss the proposed adjustments at the meeting.

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Administration's paper on "Pilot Scheme for Building Management Cases in the Lands Tribunal

(LC Paper No. CB(2)401/07-08(01))

6. The Chairman suggested and members agreed that the issue be discussed at the next meeting. The Chairman instructed the Clerk to invite all other Members to attend the meeting to discuss the issue.

IV. Items for discussion at the next meeting

(LC Paper No. CB(2)404/07-08(01) - List of outstanding items for discussion

LC Paper No. CB(2)404/07-08(02) - List of items tentatively scheduled for discussion at Panel meetings in 2007-2008 session

LC Paper No. CB(2)404/07-08(03) - List of follow-up actions)

7. The meeting agreed to discuss the following items at the next meeting on 13 December 2007 -

- (a) Pilot Scheme for Building Management Cases in the Lands Tribunal;
- (b) Solicitors' rights of audience; and
- (c) Review of the jurisdiction of the Office of the Ombudsman.

V. Statute Law (Miscellaneous Provisions) Bill 2008

(LC Paper No. CB(2)404/07-08(04) - Background Brief prepared by the Legislative Council Secretariat on "Review of legislative provisions containing the drafting formula 'to the satisfaction of' an enforcement agency"

LC Paper No. CB(2)404/07-08(05) - Administration's paper on "Statute Law (Miscellaneous Provisions) Bill 2008")

8. Deputy Solicitor General (General) (Acting) (DSG/Atg) said that the Statute Law (Miscellaneous Provisions) Bill 2008 was an omnibus bill proposing miscellaneous amendments to improve existing legislation. The proposed amendments were technical and largely non-controversial. The Administration would introduce the Bill into the LegCo in March or April 2008.

Various Ordinances containing offence provisions with the drafting formula "to the satisfaction of" an enforcement official

9. Members noted that the Panel had previously discussed the issue and the Secretariat had prepared a Background Brief on the subject.

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10. DSG/Atg briefed the Panel on the proposed amendments and members did not raise any query.

Conveyancing and Property Ordinance (Cap. 219)

11. DSG/Atg informed members that the proposed amendments to the Conveyancing and Property Ordinance (Cap. 219) were prompted by the two judgments set out in paragraph 5 of the Administration's paper. The Law Society of Hong Kong was concerned that these decisions would create unnecessary operational problems in sale and purchase of property and proposed to add new section 13A to the Ordinance to address the problem.

12. The Chairman asked whether the amendments proposed by the Law Society complied with the legislative intent of the Ordinance.

13. DSG/Atg replied in the affirmative. He explained that the judgments were to the effect that a purchaser of a property could require a vendor to produce any documents before the date for the statutory commencement of title or make any requisitions in respect of such documents in original form. However, prior to the delivery of the two judgments in 1998, a vendor was not required to produce the "originals" of "all" title deeds and documents relating "exclusively" to the subject property that were made prior to the intermediate root of title to fulfil his duty to "give" a good title. DSG/Atg advised members that the legislative intent of section 13 of Cap. 219 was to limit the period for deducing title back to a good root of title at least 15 years prior to the date of the sale and purchase agreement. The effect of the new section 13A was consistent with the legislative intent of section 13 and would help alleviate potential problems for many property owners.

14. Mr James TO said that he was not aware of many sale and purchase property agreements not being able to complete after 1998 because of the two judgments. DSG/Atg explained that the operational problems had not surfaced because there was no drastic drop in property prices in recent years. In further response to Mr TO, DSG/Atg confirmed that under the proposed amendments, a purchaser of land was entitled to require from the vendor the delivery of original copy of any document that related "exclusively" to that land as proof of title to that land (i.e. a good root of title at least 15 years prior to the date of the sale and purchase agreement).

15. Mr James TO expressed concern about situations where certified true copies of title documents were accepted in cases where a vendor was one of the co-owners of that land/lease, and the certified copies were subsequently found to be false.

16. DSG/Atg responded that one could not exclude the possibility that falsified copies existed in property transactions. Any person who intentionally produced falsified copies would be subject to criminal sanctions. If a person could not provide original documents that related exclusively to that land, he had to provide reasons for it. For example, he could take an oath to the effect that the documents were lost. There was sufficient safeguard to guard against fraud as copies of title documents

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would only be accepted if they were certified by a solicitor or a Government public officer, or attested by two solicitors' clerks.

17. Mr Martin LEE said that if a vendor who possessed the original title documents that related exclusively to that land was aware that there were defects in the title documents, he could get around the requirement to produce original copies of title documents by partitioning the land into two portions and selling them to two different parties.

18. DSG/Atg responded that if the title to the relevant land was split, certified copies of the title documents would be accepted. However, the certified copies should have reflected the defects that existed in the original title documents.

19. Mr LI Kwok-ying said that certified true copies had previously been accepted in some property transactions in Tai Po Old Town because the original title documents were lost, burnt or illegible. He asked about the impact of the new section 13A on property transactions of this kind, if any. DSG/Atg responded that savings clauses would be included in the Bill to preserve the existing practice of accepting certified true copies when warranted.

20. The Chairman said that members would have the opportunity to scrutinise the proposed amendments in detail when a bills committee was set up to study the Bill. She requested the Administration to convey members' concerns to the Law Society and to take account of members' concerns in drafting the Bill.

DoJ

Legal Officers Ordinance (Cap. 87) and related amendments

21. DSG/Atg briefed the Panel on the proposed amendments. In gist, the Government considered the post titles of "Senior Government Counsel" and "Government Counsel" in the Prosecutions Division (PD) of the Department of Justice (DoJ) should be renamed "Senior Public Prosecutor" and "Public Prosecutor" respectively, as they represented the public, rather than the Government, to institute prosecutions.

22. Senior Assistant Legal Adviser 2 said that the Chinese word "官" did not appear to have been used any longer in the designation of public officers and judges seemed to be the only ones retaining the use of "官". He asked whether the Administration had considered using other Chinese terms for "prosecutor" than "檢控官".

23. DSG/Atg responded that the Chinese term "檢控官" for "prosecutor" was largely accepted by the public. In response to members, DSG/Atg undertook to review the Chinese term used before and after the handover, and the use of the word "官" in other post titles.

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Minor and technical amendments to the Rating Ordinance (Cap. 116)

24. DSG/Atg briefed the Panel on the proposed amendments and members did not raise any query.

VI. Staff wastage in the Prosecutions Division of the Department of Justice
(LC Paper No. CB(2)404/07-08(06) - Administration's paper on "Staff Wastage in the Prosecutions Division, Department of Justice")

Workload in the PD

25. Director of Administration and Development (DAD) briefed members on the paper which set out the staff wastage situation of Government Counsel (GC) grade officers in the PD of the DoJ. Members noted that the GC grade officers comprised Government Counsel, Senior Government Counsel (SGC), Deputy Principal Government Counsel, Principal Government Counsel and Law Officer.

26. The Chairman held the view that the unusually high wastage rate of GC in the PD in 2006/2007 was not only attributable to the buoyant job market in the legal profession, but also the heavy workload in the PD. She pointed out that not many cases were briefed out in 2006-2007. Given the heavy workload, GC grade officers were often in court and did not have sufficient time to handle preparatory work. The Chairman said that on quite a number of occasions while taking up prosecution work on fiat, she had encountered difficulty in contacting the GC concerned because he was in court. She expressed concern that justice would be compromised if heavy workload prevented GC from undertaking advisory work.

27. DAD responded that the workload for criminal and civil litigation had indeed been heavy in recent years. In addition, since the Judiciary had undergone a period of recruitment freeze and had not made judicial appointments for a few years before 2006-2007, the offer of judicial appointments to four counsel in the PD in 2006-2007 had, to a certain extent, brought about a higher wastage rate in that year. To alleviate workload, two SGC grade officers and eight GC grade officers would be added to the PD in 2007-2008.

28. Deputy Director of Public Prosecutions (DDPP) supplemented that so far as advocacy work was concerned, quite a number of cases were briefed out. The real pressure faced by the PD over the years was in advisory work. In that area, there had been increases in work and also increased pressure from the court. For instance, when advising in a particular case on the issue of disclosure, the GC grade officer had to be involved more heavily as far as legal authority was concerned. As a general rule, advisory work could not be briefed out as it required specialised knowledge usually in a particular area. That was where counsel in the PD had suffered the most and there were situations where they had to work until late hours and over the weekends. Last year, the PD had managed to recruit nine GC grade officers to fill existing vacancies and there were vacancies remaining unfilled. Another recruitment exercise was on the way to further relieve work pressure in the PD.

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- DoJ 29. The Chairman requested and DDPP undertook to provide past statistics on the workload of the PD and the number of back-to-back cases handled by GC.
30. Referring to paragraph 12 of the Administration's paper, Ms Miriam LAU asked about the basis for the PD to say that it had discharged efficient and effective legal functions in the past few years.
31. DAD explained that the PD had largely been able to fulfil its performance target in the past few years. Had all the vacancies been filled and staff wastage been contained, staff morale would have been better.
32. In response to the Chairman's questions on the table presented in page 2 of the Administration's paper, DDPP explained that the overall wastage rate of the GC grade in the DoJ was 2.5% up to November 2007, while the overall wastage rate in the civil service was 1.57% up to September 2007. DDPP further said that some new recruits started to join the DoJ in July 2007.

Court Prosecutor grade

33. Mr Martin LEE said that it was opportune to review the Court Prosecutor grade, the so called lay prosecutor scheme, with more and more law students graduating. In his view, it was better to have qualified persons to prosecute in court as there could be injustice even in magistrates' courts. A legally qualified person with some working experience was likely to discharge the duties of a prosecutor more effectively.
34. DDPP responded that court prosecutors were generally experienced. The Administration had difficulty in filling up vacancies for GC to prosecute in the higher courts, let alone getting them to prosecute in the lower courts. The fact was that since the early 1980's, Court Prosecutors had served Hong Kong well. They were well-trained and properly supervised. The types of cases handled were limited. If cases involved difficult points of law, GC or counsel briefed from the private practice would be employed in the prosecution. Court Prosecutors did a fair job as reflected not only on their day-to-day work, but also on the low appeal rate. Although some of them were not legally qualified persons, it did not follow that injustice was being done as they were properly trained and supervised.
35. The Chairman agreed with Mr Martin LEE that the lay prosecutor scheme should be reviewed, including how it compared with the practices in other jurisdictions, whether it was justified to have unqualified persons for prosecution before any court if the liberty of a person was involved, etc. Mr Martin LEE said that it would be a good idea to recruit fresh graduates as court prosecutors before they became good lawyers. The Chairman said that the Administration should also consider creating "Assistant Public Prosecutor" posts in order to recruit newly qualified persons of the Bar with a view to building up a stronger public prosecution division.

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36. In response to the Chairman and Mr Martin LEE, DDPP made the following points –

- (a) in relation to the use of non-qualified persons to deal with summary cases, England had followed Hong Kong in the sense of having dedicated case workers to handle prosecutions in the lower courts. In Australia, most prosecution cases in the magistrates' courts were carried out by police prosecutors;
- (b) the Administration's concern was to provide the best prosecution services available. At present, about 50% of Court Prosecutors had some legal qualification;
- (c) there was a trainee system in the PD to recruit newly qualified solicitors and barristers every year. These trainees were eligible to become GC later on; and
- (d) the DoJ previously had "Assistant Crown Counsel" posts and it would review the need for the creation of similar posts.

DoJ

37. The Chairman requested and the Administration undertook to provide a paper on the review of the Court Prosecutor grade. Members agreed that the paper would be circulated to the two legal professional bodies and the law faculty of tertiary institutions for comments upon receipt.

38. There being no other business, the meeting ended at 5:50 pm.

Council Business Division 2
Legislative Council Secretariat
20 December 2007