

**立法會**  
**Legislative Council**

Ref : CB2/PL/AJLS

LC Paper No. CB(2)1697/07-08  
(These minutes have been seen  
by the Administration)

**Panel on Administration of Justice and Legal Services**

**Minutes of meeting**  
**held on Monday, 25 February 2008, 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-ye, GBS, JP  
Hon CHOY So-yuk, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon LI Kwok-ying, MH, JP

**Member attending** : Hon Albert HO Chun-yan

**Members absent** Hon Emily LAU Wai-hing, JP

**Public Officers attending** : Item IV  
The Administration  
Home Affairs Bureau  
Mr Thomas Edward KWONG  
Deputy Director of Legal Aid  
Miss Christine CHOW Kam-yuk  
Principal Assistant Secretary for Home Affairs

Item V  
The Administration

Administration Wing, Chief Secretary for Administration's  
Office

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Miss Shirley YUNG  
Deputy Director of Administration (1)

Mr Arthur AU  
Assistant Director of Administration (1)

Item VI

The Administration

Administration Wing, Chief Secretary for Administration's  
Office

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Mr K C YAU  
Assistant Director of Administration (3)

**Attendance by  
invitation** :

Item IV

Hong Kong Bar Association

Ms Audrey Campbell-Moffat

The Law Society of Hong Kong

Mr Lester G. HUANG  
President

Mr Stephen HUNG Wan Shun  
Chairman, Criminal Law & Procedure Committee

Item V

Hong Kong Bar Association

Mr P Y LO

Item VI

Hong Kong Bar Association

Mr P Y LO

**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

Mrs Fanny TSANG  
Legislative Assistant (2)3

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**I. Confirmation of minutes of meeting**

(LC Paper No. CB(2)1141/07-08 - Minutes of meeting on 28 January 2008)

The minutes of the meeting held on 28 January 2008 were confirmed.

**II. Items for discussion at the next meeting**

(LC Paper No. CB(2)1146/07-08(01) - List of outstanding items for discussion

LC Paper No. CB(2)1146/07-08(02) - List of items tentatively scheduled for discussion at Panel meetings in 2007-2008 session

LC Paper No. CB(2)1146/07-08(03) - List of follow-up actions

LC Paper No. CB(2)1176/07-08(01) - Administration's letter dated 22 February 2008 on "Limited Liability for Professional Practices"

LC Paper No. CB(2)1203/07-08(01) - Chairman's letter dated 20 February 2008 requesting Secretary for Justice to provide information on the case of Mr CHUNG Yik-tin

LC Paper No. CB(2)1203/07-08(02) - Information paper provided by the Administration on Mr CHUNG Yik-tin's case)

Information paper on Mr CHUNG Yik-tin's case

2. The Chairman said that in response to her request, the Department of Justice (DoJ) had provided an information paper giving an account of Mr CHUNG Yik-tin's case. The Chairman expressed concern about the role of DoJ in the incident and the prosecution policy and procedure concerning the case. She sought views from members as to whether the matter should be discussed at the next meeting or a special meeting.

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3. Ms Miriam LAU expressed concern whether it was appropriate for the Panel to discuss the case at this juncture because investigations concerning Mr CHUNG was ongoing.

4. Ms Audrey EU suggested that the matter be discussed at the next meeting, as Mr CHUNG's case raised a number of legal issues -

- (a) whether the Police and the DoJ should obtain an interim classification from the Obscene Articles Tribunal before instituting prosecution;
- (b) whether the prosecution's submission that Mr CHUNG was suspected of committing other offences constituted a reasonable ground for refusing bail; and
- (c) whether Mr CHUNG's application for bail was handled in the same manner as other criminal cases.

5. The Chairman said that as the matter had aroused wide public concern, it would be discussed at the next meeting.

Limited liability for professional practices

6. The Chairman informed member that the Administration had responded that given that there remained five months in the current legislative session, it appeared unrealistic to revert to the Panel on the item "Limited liability for professional practices" during this legislative session. The Chairman said that she would request the Administration to advise on the present state of affair.

*(Post-meeting note: The Chairman sent a letter to Secretary for Justice on 6 March 2008.)*

Agenda for the next meeting

7. Members agreed that the following items would be discussed at the next meeting on 19 March 2008 –

- (a) Prosecution policy and procedure arising from the case of Mr CHUNG Yik-tin;
- (b) Recovery agents; and
- (c) Applicability of HKSAR laws to offices set up by the Central People's Government in HKSAR.

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**III. Proposed research outline on legal aid systems in selected places**

(LC Paper No. CB(2)1144/07-08(01) - Proposed research outline prepared by the Research and Library Services Division)

8. Head of the Research and Library Services Division (H(RL)) briefed members on the proposed research outline on legal aid systems in selected places as set out in the paper. In gist, the Research and Library Services Division (RLSD) would study the governance, financing, coverage, eligibility, and delivery in respect of legal aid services in England and Wales of the United Kingdom, the Province of Ontario of Canada and the State of New South Wales of Australia. The study would consist of six parts. The RLSD would submit an interim report in June 2008 covering the first three parts, and would complete the whole research by October 2008.

9. The Chairman said that it would be useful if the first part of the report could be ready in May when the Panel discussed the item "Provision of legal aid services". She suggested that the RLSD could consider narrowing the scope of the first part of the report.

RLSD

10. H(RL) said that the RLSD would focus on studying "Part 2 - Major development/reform in recent years" and part of "Part 3 - Governance and finance" in the selected places with a view to completing the first part of the report in May 2008.

**IV. Criminal legal aid fees system**

(LC Paper No. CB(2)1143/07-08(01) - Background Brief prepared by the Legislative Council Secretariat on "Criminal legal aid fees system"

LC Paper No. CB(2)1143/07-08(02) - Administration's paper on "Criminal legal aid fees system"

LC Paper No. CB(2)1143/07-08(03) - Society for Community Organization's submission

LC Paper No. CB(2)1176/07-08(02) - The Law Society of Hong Kong's submission on "Review of Criminal Legal Aid Fee System"

LC Paper No. CB(2)1203/07-08(03) - Members' Survey Report of the Law Society of Hong Kong on criminal legal aid fees system

LC Paper No. CB(2)1245/07-08(03) - Hong Kong Human Rights Monitor's submission on "Criminal legal aid fees system")

11. The Chairman informed members that the following papers were tabled at the meeting to facilitate members' discussion on criminal legal aid fees system -

- (a) the Law Society of Hong Kong's submission on "Review of Criminal Legal Aid Fee System" (issued to members vide LC Paper No. CB(2)1176/07-08(02) on 25 February 2008);

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- (b) Members' Survey Report of the Law Society of Hong Kong on criminal legal aid fees system (issued to members vide LC Paper No. CB(2)1203/07-08(03) on 26 February 2008); and
- (c) Hong Kong Human Rights Monitor's submission on "Criminal legal aid fees system" (issued to members vide LC Paper No. CB(2)1245/07-08(03) on 29 February 2008).

12. Principal Assistant Secretary for Home Affairs (PAS/HA) introduced the paper which reported progress of discussions with the two legal professional bodies on the criminal legal aid fees system.

13. Mr Lester HUANG, President of the Law Society of Hong Kong, informed members of the findings of a survey conducted by the Law Society between 17 October 2007 and 6 November 2007 on solicitors and law firms engaged in criminal litigation. He highlighted the findings of the survey and the Law Society's views as follows -

- (a) over 90% of the respondents considered that the criminal legal aid fees system could be improved;
- (b) over 75% of the respondents considered that they had insufficient resources to carry out preparatory or pre-trial work for criminal legal aid cases;
- (c) over 90% of the respondents were dissatisfied with the hourly rates proposed by the Administration for the criminal pre-trial work at \$425 and \$300 for the High Court and District Court respectively;
- (d) many respondents had considered ceasing to engage in criminal legal aid cases. Over 50% of the most senior group (solicitors with 15 years of experience or more) and over 75% of the least experienced group (solicitors with three years experience or less) indicated that they had considered ceasing to engage in criminal legal aid cases. This implied that there would be a significant shrinking of the pool of solicitors working on criminal legal aid cases;
- (e) none of the solicitors engaged in criminal legal aid cases had requested to be paid at market rates. About 45% of the respondents indicated they would accept a discount, say 30%, on the market rates. 35% of the respondents had suggested that the hourly rates in criminal legal aid work should be comparable with the civil taxation rates;
- (f) many respondents held the view that the Law Society should accept the proposed criminal legal aid fees structure provided an agreement on the level of fees for the various items applicable to different levels of court could be reached with the Administration;

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- (g) the Law Society attached importance to the principle of the equality of arms. The criminal legal aid fees system for defence lawyers should be compatible with the fee regime for the prosecution counsel. The Law Society noted that the remuneration for prosecution counsel had increased by over 60% since 1992 but no adjustment had been made to the remuneration for criminal legal aid lawyers;
- (h) the Law Society's position was that the hourly rates for criminal legal aid should be on par with the civil taxation rates on a party-to-party basis. For example, the party and party taxation rates for High Court civil proceedings were \$2,400 to \$3,000 per hour for a solicitor with five to six years' experience and \$1,400 per hour for a trainee solicitor; and
- (i) the Law Society also considered that the conference fees for barristers and solicitors should be compatible. At present, the hourly rates for barristers and solicitors were \$1,200 and \$300/\$400 respectively.

14. Mr Stephen HUNG Wan Shun, Chairman of Criminal Law & Procedure Committee of the Law Society, supplemented that the Law Society disagreed with the view that the fees for lawyers in private practice engaged by the Legal Aid Department (LAD) to act as defence lawyers in criminal legal aid cases, and lawyers in private practice engaged by the DoJ to prosecute in criminal cases on behalf of the Government should follow the same scale administratively. He pointed out that while defence lawyers had to undertake pre-trial preparation work, the prosecution lawyers would be provided with the relevant documents before trial.

15. Ms Audrey Campbell-Moffat of the Hong Kong Bar Association expressed concern that the working committee on criminal legal aid fees system had adjourned for six to seven months and little progress had been made. She urged the Administration to encourage all parties to reconvene to iron out difficulties.

16. Ms Miriam LAU and Mr Martin LEE shared the Law Society's concerns. Ms LAU said that a preparation fee of \$300/\$400 per hour was unacceptable. Given the complexity of criminal cases, the level of fees payable to lawyers should be higher than those for civil cases. In addition, as criminal litigation affected the liberty of a person, it would be unfair if the legal aid provided to the defence only allowed him to engage lawyers with less experience. Ms LAU queried why the Administration had claimed that it had reached consensus with the two legal professional bodies on the issue. Mr Martin LEE considered that the calculation of the reading fee on the assumption that solicitors could read 90 pages of documents in one minute for preparation was unreasonable. Miss CHOY So-yuk said that some members of the public had relayed to her that solicitors were unwilling to take up criminal legal aid cases because of the low remuneration. Ms Audrey EU expressed disappointment that the Administration's response had not addressed the concerns raised by the Law Society.

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17. In response to the two legal professional bodies and members, PAS/HA said that the Administration recognized that the remuneration for criminal legal aid lawyers could be improved. It had taken forward the review with a view to ensuring compatibility of the criminal legal aid fees system for defence lawyers with the fee regime for prosecution counsel, and providing reasonable and effective remuneration for legal aid lawyers within the remits of public affordability. She explained that the difference in fees proposed for barristers and solicitors, such as reading fee, reflected the different nature of work engaged by the respective practitioners in a criminal case. She further explained that as the legal aid fee systems for civil and criminal cases operated under different regimes, it was not meaningful to compare the two. A broad consensus had been reached with the legal professional bodies on the proposed structure of the criminal legal aid fee system which would operate on a marked-brief basis. She expressed concern about the Law Society's new position on the adoption of civil party and party taxation rates for criminal legal aid work, which had departed from the proposed fee structure discussed by the working committee. She said that the Administration needed time to study the new proposal.

18. Deputy Director of Legal Aid supplemented that historically, legal aid fees for criminal cases were set at a flat rate while those for civil cases were set at an hourly rate. Hong Kong was not the only place adopting different legal aid fees systems for criminal and civil cases.

19. Mr Lester HUANG clarified that the Law Society agreed with the proposed structure for criminal legal aid fees system. However, it could not accept the proposed level of fees on the various payment items applicable to different levels of court. For example, the Law Society would expect a fee level of \$2,400/\$3,000 per hour for criminal pre-trial work for the High Court conducted by a solicitor with five to six years' experience and \$1,400 per hour for a trainee solicitor, instead of \$425 proposed by the Administration.

20. The Chairman said that civil and criminal legal aid operated under different regimes. Unlike civil legal aid fees, criminal legal aid fees were prescribed in Rule 21 of the Legal Aid in Criminal Cases Rules, subsidiary legislation made under the Criminal Procedure Ordinance (Cap. 221). To her understanding, a broad consensus had been reached by the Administration with the legal professional bodies on the proposed structure of the criminal legal aid fees system. However, the Law Society and the Administration held divergent views on the proposed level of fees on the various payment items. Given the low fee rates proposed by the Administration, she inclined to sympathise with the Law Society. As the Law Society had indicated its expected level of fees, the Chairman urged the Administration to negotiate with the Law Society to resolve differences, and report to the Panel in due course.

*(Post-meeting note: Subsequent to the meeting, the Law Society has written to the Chairman attaching a letter from its President to the Secretary for Home Affairs concerning its position on the level of remuneration in criminal legal aid cases. The letter was issued to members vide LC Paper No. CB(2)1247/07-08(01) on 29 February 2008.)*



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**V. Review of the jurisdiction of the Office of The Ombudsman**

(LC Paper No. CB(2)1144/07-08(02) - Background Brief prepared by the Legislative Council Secretariat on "Review of the jurisdiction of the Office of The Ombudsman"

LC Paper No. CB(2)961/07-08(01) - Report on Review of the Jurisdiction of the Office of The Ombudsman (Part 1)

LC Paper No. CB(2)1146/07-08(04) - Administration's paper on "Review of the Jurisdiction of the Office of The Ombudsman")

21. Deputy Director of Administration (1) (DDA) briefed members on the paper which explained why the Administration considered that the Electoral Affairs Commission (EAC) and District Councils (DCs) should not be subject to the jurisdiction of the Office of The Ombudsman, as recommended by The Ombudsman in Part 1 of her review. In gist, the administrative work of election-related activities and district facilities was handled by the relevant executive departments which were already subject to the jurisdiction of the Ombudsman. Hence, it was not necessary to place the EAC or the DCs under The Ombudsman's jurisdiction.

22. Mr P Y LO of the Bar Association said that while he understood the Administration's position, he expressed concern whether the Registration and Electoral Office (REO) (an executive arm of the EAC), the Home Affairs Department (HAD) and the Leisure and Cultural Services Department (LCSD) (both the executive arm of the DCs) would be exempted from The Ombudsman's jurisdiction for various reasons. For example, The Ombudsman might be unable to investigate into a complaint about the inefficiency of voter registration due to the argument that the REO was acting on the instruction of the EAC, and The Ombudsman might be unable to investigate into a complaint about the use of funds for local community activities because the LCSD argued that it had followed the decision of the DC concerned on the use of public funds.

23. DDA responded that the Administration was not aware of any incident in which The Ombudsman could not deal with a maladministration complaint brought against the REO in relation to its election-related administrative work in past elections. As regards the use of DC funds, the HAD had promulgated a new set of guidelines on the use of DC funds after consulting the Financial Services and the Treasury Bureau, the ICAC, the DoJ, the Audit Department, etc. The guidelines were to ensure that public funds were used in a proper, transparent and accountable manner. The Director of Home Affairs remained the vote controller of DC funds.

24. In response to the Chairman, DDA said that the Administration had commenced its consultation with the six bodies, namely the Auxiliary Medical Service, Civil Aid Service, Board of Management of Chinese Permanent Cemeteries, Chinese Temples Committee, Consumer Council and Estate Agents Authority, on the recommendation to subject them to The Ombudsman's jurisdiction. After collating their views, the Administration would be in a better position to formulate its final response to the recommendations made in Part 1 of the Ombudsman's review.

## **VI. Review of the non-commencement of ordinances**

(LC Paper No. CB(2)1146/07-08(05) - Administration's paper on "Review of the non-commencement of ordinances")

25. Assistant Director of Administration (3) (ADA) said that the Administration had prepared the list "Ordinances enacted in 2004 or before and not yet in operation" (the List) setting out the 29 ordinances with provisions which had not come into operation. The List contained a brief description of the purposes of those provisions, the reasons for not yet bringing those provisions into operation, and the plans, if any, to bring them into operation.

26. The Chairman said that she would classify the provisions into two categories. First, the provisions which required further preparatory work before they could be brought into operation. Second, the provisions which would not be brought into operation. On the second category, the Chairman quoted the Wills (Amendment) Ordinance 1995 (item 8 on the List) as an example and pointed out that the Administration was incapable of bringing section 8 into operation because after the Handover, China was a not signatory state to the *Convention Providing a Uniform Law on the Form of an International Will concluded at Washington on 26 October 1973*. In the circumstances, the Administration should advise the Panel the way forward for the item.

27. Mr P Y LO said that the Bar Association was surprised at the non-commencement of so many provisions despite the enactment of the principal ordinances a long time ago. In order not to mislead the public, he urged the Administration to review whether some of these provisions should be repealed. Referring to the List, he made the following observations -

- (a) certain provisions were no longer necessary because of changes over time (e.g. items 1, 4 and 8 on the List) and they could be repealed at an appropriate time; and
- (b) the status of certain provisions remained unclear as the need for their retention was subject to constant review by the relevant bureaux (e.g. items 2, 3, 5, 6, 12 and 17 on the List).

Mr LO said that he was uncertain whether the respective bureaux or the DoJ should follow up on these ordinances.

28. In response to the Chairman, Mr P Y LO said that the Bar Association had not formed any view on the provisions which should be retained or repealed. From the policy point of view, the Bar Association considered that item 9 on the List should be followed up as soon as practicable as section 33 of the Personal Data (Privacy) Ordinance, which sought to regulate the transfer of personal data to places outside Hong Kong, followed the measures adopted by the European Union, and the Ordinance was enacted in 1995.

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29. Referring to item 1 on the List, Mr Martin LEE said that certain provisions in the Boilers and Pressure Vessels Ordinance which sought to govern the safe use of pressurised fuel containers should be brought into operation to ensure that the law was in place in the event of an accident, irrespective of whether the containers were relatively safe to operate. He said that the Administration should review the items on the List one by one and advise the Panel on the way forward.

Adm

30. ADA responded that relevant bureaux would take into account the latest development, actual situation and policy needs to decide whether certain provisions should be retained or repealed. In response to the Chairman, ADA undertook to consult the relevant bureaux (on which provision should be repealed, why certain provisions had to be retained, timing for bringing certain provisions into operation, etc.) and provide a coordinated response report for the consideration of the Panel.

31. The Chairman said that upon receipt of the Administration's report, the Panel would consider the need to further discuss the matter. The Panel welcomed the Administration's suggestion to provide the Panel with an updated list once every two years to facilitate members to monitor the status.

32. There being no other business, the meeting ended at 6:35 pm.

Council Business Division 2  
Legislative Council Secretariat  
25 April 2008