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LC Paper No. CB(2)2007/07-08
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by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Wednesday, 19 March 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 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

Member attending : Hon LEUNG Kwok-hung

Members absent Hon James TO Kun-sun
Hon CHOY So-yuk, JP
Hon LI Kwok-ying, MH, JP

Public Officers attending : Item III
Department of Justice

Mr Ian McWalters, SC
Deputy Director of Public Prosecutions

Mr Richard Turnbull
Senior Assistant Director of Public Prosecutions

Ms Anthea PANG
Senior Assistant Director of Public Prosecutions

Security Bureau

Mrs Jessie TING, JP
Deputy Secretary for Security 1

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Hong Kong Police Force

Mr WONG Fook-chuen
Assistant Commissioner of Police (Crime)

Commerce and Economic Development Bureau

Mr Kevin CHOI
Principal Assistant Secretary for Commerce and Economic
Development (Communications and Technology)A

Item IV

Department of Justice

Mr Frank POON
Deputy Solicitor General (General) (Acting)

Ms Adeline WAN
Senior Government Counsel

Item V

Constitutional and Mainland Affairs Bureau

Mr Joshua LAW, JP
Permanent Secretary for Constitutional and Mainland Affairs

Ms Joyce HO
Principal Assistant Secretary for Constitutional and Mainland
Affairs

Miss Wendy AU
Principal Assistant Secretary for Constitutional and Mainland
Affairs (Acting)

Department of Justice

Mr Benedict LAI, JP
Law Officer (Civil Law)

Mr Gilbert MO
Deputy Law Draftsman (Bilingual Drafting and Administration)

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**Attendance by
invitation** :

Item III

Hong Kong Bar Association

Mr Adrian Bell

Professor Dennis Baker

Assistant Professor of the School of Law
The Chinese University of Hong Kong

Mr Eric CHEUNG

Assistant Professor of the Faculty of Law
The University of Hong Kong

Item IV

Hong Kong Bar Association

Mr Osmond LAM

The Law Society of Hong Kong

Mr Ludwig NG

Chairman of the Working Party on Recovery Agents

Mr Patrick Burke

Member of the Working Party on Recovery Agents

Mr Tommy WONG

Member of the Working Party on Recovery Agents

**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

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I. Information papers issued since last meeting

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

LC Paper No. CB(2)1247/07-08(01) - Letter dated 22 February 2008 from the Law Society of Hong Kong enclosing a letter from its President to the Secretary for Home Affairs concerning the criminal legal aid fees system

LC Paper No. CB(2)1299/07-08(01) - Administration's letter dated 6 March 2008 on "Subsidiary Legislation relating to Privileges and Immunities Conferred on Specified International Organizations"

LC Paper No. CB(2)1299/07-08(02) - Administration's paper on "Subsidiary Legislation relating to Privileges and Immunities Conferred on Specified International Organizations")

Members noted that the above papers had been issued since the last meeting.

II. Items for discussion at the next meeting

(LC Paper No. CB(2)1357/07-08(01) - List of outstanding items for discussion

LC Paper No. CB(2)1357/07-08(02) - List of items tentatively scheduled for discussion at Panel meetings in 2007-2008 session

LC Paper No. CB(2)1357/07-08(03) - List of follow-up actions)

Agenda for the next meeting

2. The Chairman informed members that the Law Society of Hong Kong had advised that the Professional Indemnity Scheme Review Working Party would provide a progress report to the Panel in due course, but was unable to attend the meeting in April 2008. The Chairman suggested and members agreed that the Panel would consider when to discuss the item after receiving the progress report from the Law Society.

3. Members agreed that the following items would be discussed at the next meeting on 28 April 2008 –

- (a) Meeting with the Law Draftsman;
- (b) Transcript fees; and
- (c) Determination of judicial remuneration.

III. Prosecution policy and procedure arising from the case of Mr CHUNG Yik-tin

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

LC Paper No. CB(2)1357/07-08(04) - Submission from Professor Dennis Baker, School of Law, The Chinese University of Hong Kong)

4. The Chairman informed members that arising from the case of Mr CHUNG Yik-tin, the Panel on Security had discussed law enforcement against cyber crimes relating to obscene and indecent articles and Internet security issues at its meeting on 29 February 2008. The Panel on Information Technology and Broadcasting (ITB Panel) had also discussed the effectiveness of the existing regulatory regime under the Control of Obscene and Indecent Articles Ordinance (COIAO) (Cap. 390) at its meeting on 14 January 2008. The Administration had advised that it would conduct a comprehensive review of the provisions of the COIAO. The purpose of this meeting was to discuss the role of the Department of Justice (DoJ), the prosecution policy and procedure arising from case of Mr CHUNG.

5. The Chairman welcomed Mr Adrian Bell of the Hong Kong Bar Association, Professor Denis Baker and Mr Eric CHEUNG of the University of Hong Kong to the meeting. She said that Mr Baker's submission was relevant to the review of COIAO. He had been advised that the Panel would not be able to discuss the main thrust of his paper but he was welcome to present his views to the Panel.

Views of the Administration and deputations

6. At the invitation of the Chairman, Deputy Director of Public Prosecution (DDPP) briefly went through the paper which gave an account of Mr CHUNG's case, the involvement of the parties concerned, including the Police, the defence lawyer and the court, and the role of the DoJ in respect of the proceedings against Mr CHUNG.

7. Mr Adrian Bell said that the Bar Association had no particular view in relation to that specific case. The Bar Association was interested in hearing the views of the Administration and Members on the matter.

8. Professor Dennis Baker considered that the prosecution process fairly standard and he had nothing to add.

9. Mr Eric CHEUNG held the view that the case reflected administrative problems rather than procedural problems. He made the following points -

- (a) he agreed with the view of the DoJ that it was not necessary for the Police to obtain an interim classification from the Obscene Articles Tribunal (OAT) before instituting prosecution, as the COIAO did not require a pre-charge classification. One should not confuse an administrative classification by the OAT and a judicial assessment by the court on the obscenity of an article;

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- (b) the Administration's paper had not provided information on the criteria adopted by the Police in determining whether or not an article was obscene, whether the policeman in charge of the case was experienced in handling obscene articles which was the subject of the charge, and whether the Police had made reference to the classification criteria adopted by the OAT; and
- (c) the case reflected that the criteria adopted by the OAT in classifying whether an article was obscene was not transparent, as both the Police and the defence lawyer considered that the article in question was obscene. To enhance transparency, the OAT should provide reasons for its past rulings, e.g. on website, for reference of the public and the Police.

Issues raised

Review of the COIAO

10. Ms Emily LAU asked about the timetable for the review of the COIAO.
11. Principal Assistant Secretary for Commerce and Economic Development (Communications and Technology) (PASCED) briefed members on the operation of the COIAO and the classification mechanism as follows -
 - (a) the COIAO provided for the regulatory regime for controlling obscene and indecent articles, including the publication and public display of such articles. Under the COIAO, "obscenity" and "indecent" included violence, depravity and repulsiveness. The term "article" had a broad definition covering anything containing material to be read and/or looked at, any sound-recording, any film, disc or other record of a picture;
 - (b) section 10 of the COIAO set out the factors to be considered by the OAT in making classification. The basic criterion was that the OAT should have regard to the standards of morality, decency and propriety that were generally accepted by reasonable members of the community;
 - (c) the OAT, set up under the COIAO as part of the Judiciary, was vested with exclusive jurisdiction to determine for the purposes of the COIAO whether any article was obscene or indecent. An OAT comprised a presiding magistrate and two or more members drawn from a panel of adjudicators appointed by the Chief Justice. The adjudicators were ordinary members of the public with a wide spectrum of socio-economic background;

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- (d) a presiding magistrate usually drew only two adjudicators to form an OAT to make an interim classification and four adjudicators to form an OAT at a full hearing. If there was a request for a review of the interim classification, the OAT was required to set a date for a full public hearing. The OAT would consist of adjudicators who were not previously involved in the interim classification; and
- (e) in view of the community's concerns about the various aspects of the operation of the COIAO, the Administration would conduct a comprehensive review of the provisions of the COIAO and the current classification mechanism. The review had already commenced and the Administration would consult different sectors of the community, LegCo Members and members of the public on what improvements could be made in the latter half of this year. The matter was currently followed up by the ITB Panel.

12. Mr Martin LEE asked about the differences between the definitions of "obscenity" and "indecenty". The Chairman said that this was a contentious issue as the two definitions had never been clear. She said that it was more appropriate for the matter to be followed up by the ITB Panel.

Obtaining interim classification before instituting legal proceedings

13. Ms Miriam LAU asked whether there was any precedent case where a person was convicted of publishing an obscene article which was subsequently classified by the OAT as indecent article. DDPP responded that he was not aware of such a case. If such a situation occurred, it would be for the person concerned to appeal his conviction.

14. Ms Miriam LAU said that having regard to the experience of Mr CHUNG's case, whether the DoJ would consider obtaining an interim classification from the OAT before instituting prosecution in future.

15. DDPP explained that the DoJ would become involved with Police investigation in two ways. The normal way was that the DoJ would receive a file from the police after the investigation had been completed. The DoJ would then determine whether the article was obscene or otherwise. If it was in doubt, it would seek assistance from the Television and Entertainment Licensing Authority (TELA) to resolve the doubt. The other way was for the DoJ to render urgent legal advice to assist the Police (in this case legal advice was provided on whether the act of Mr CHUNG amounted to publication of the photograph), and the DoJ would rely on the Police's view on the classification of the article. In Mr CHUNG's case, the Police, the magistrate and the defence counsel held the view that article was obscene at the time.

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16. DDPP further said that the COIAO did not require law enforcement agencies to obtain an interim classification from the OAT before instituting prosecution. What the COIAO contemplated was that if a person pleaded not guilty to an offence involving an obscene article, then the court might seek classification of the article in question. It would be rare for the court not to obtain classification from the OAT because the obscenity of the article was a contested issue in a trial. Nevertheless, the need for classification was to be ultimately decided by the magistrate who presided over the proceedings. Even if the defendant wished to plead guilty, the magistrate still had to decide whether the article presented was one that he would regard as obscene or otherwise.

17. Assistant Commissioner of Police (Crime) (ACP) said that for cases involving obscene articles, the Police would complete investigation of the case before deciding whether to prosecute and where necessary, seek legal advice from the DoJ before laying charges. Where there was any doubt on the nature of the articles concerned, the Police might submit the articles in question to the OAT for classification before deciding on the way forward.

18. Mr Eric CHEUNG expressed reservation on the approach for law enforcement agencies to obtain an interim classification from the OAT before instituting prosecution. He reiterated that an administrative classification was different from a judicial judgment; the former was not legally binding. He also expressed concern that the results of an interim classification and a final classification for the same article made by the OAT could be different, as different adjudicators were involved. In his view, the approach to obtain an interim classification was not favourable to a defendant, given that its result might impact on the result of a full hearing conducted by the OAT at the request of the court. He stressed that the crux of the matter was to provide clear and objective criteria for the OAT to make classification and to provide past rulings of OAT adjudicators to ensure consistency in classification.

19. Mr LEUNG Kwok-hung considered that the Administration should apologize to Mr CHUNG. On Mr Eric CHEUNG's view, he disagreed that seeking an interim classification was disadvantageous to the defendant. He said that if the classification criteria were relaxed, it was unlikely for the classification results for articles of similar nature or the same article made by different panels of adjudicators of the OAT to be very different. He urged the Administration to review and improve the classification mechanism.

20. Ms Audrey EU pointed out that in the absence of clear and objective criteria for classification and before the review of the COIAO was completed, the minimum safeguard that could be provided to the public was to require law enforcement agencies to obtain an interim classification before laying charges. If the defendant was not satisfied with the interim classification, he could request for a review at a full hearing of the OAT. She enquired about the reasons for law enforcement agencies choosing to institute prosecution before obtaining an interim classification from the OAT which could be available in a relatively short time.

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21. Senior Assistant Director of Public Prosecutions (SADPP) and PASCED responded with the following points -

- (a) the COIAO allowed law enforcement agencies to adopt two different approaches in handling obscene or indecent articles, i.e. either instituting prosecution without obtaining an interim classification from the OAT or obtaining an interim classification prior to instituting prosecution. Where a law enforcement agency considered that the articles in question were obviously obscene and where a vast volume of these articles were involved, the law enforcement agency could take immediate enforcement actions, such as seizure of thousands of obscene VCDs/DVDs at retail outlets and laying charges against their owners, without obtaining an interim classification from the OAT. Where there was doubt on the nature of the articles concerned, the law enforcement agency could submit the articles in question to the OAT for classification before deciding on the way forward;
- (b) the COIAO did not require a pre-charge classification. Sections 29(2) and 29(3) of the COIAO made clear that in civil or criminal proceedings, articles should only be sent to the OAT for classification when the question of whether the article was indecent or obscene would be a live issue in those proceedings; and
- (c) a court or magistrate would not adjudicate on the obscenity or otherwise of an article based on the defendant's admission before the court. The court or magistrate would make an independent assessment on the article concerned having regard to the evidence admitted and if in doubt, would send the article to the OAT for classification.

22. Mr Martin LEE asked that if history could be rewritten, whether the prosecution and the Police would have acted differently in the case of Mr CHUNG.

23. DDPP said that at this stage he did not consider that the prosecution would have done otherwise. Had the prosecution been better informed of the distinction between "obscene" and "indecent" articles, it might be in a position to make an expert opinion on that. He said that the prosecution counsel handling the case of Mr CHUNG was not experienced in handling obscene/indecent articles. In the afternoon on 31 January 2008, the Police contacted and consulted the counsel on whether the act of uploading the photograph to the Internet amounted to a publication of the photograph. As the Police had not put together a file on evidence, the counsel relied on the oral briefing by the Police. The counsel confirmed that such an act could amount to publication of the photograph. DDPP clarified that the prosecution was not asked to give advice on whether Mr CHUNG should be charged. The prosecution was subsequently brought in primarily on the bail application. However, it should be noted that the Police's view that the article was obscene was not dissented by anyone in the court that day. He stressed that the prosecution did not determine whether a person should be remanded in custody. The prosecution made

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submissions to an independent judicial officer, who in his own mind, determine whether there was a case for remanding the person in custody based on the material placed before him.

24. ACP said that unless additional information concerning the case was provided at that time, the Police would not have acted otherwise. He informed members that the policeman who was in charge of the case of Mr CHUNG had worked in the Police Force for 34 years, with four years working in a special investigation team and five years dealing with cyber crimes and obscene articles uploaded onto the Internet.

25. Ms Emily LAU asked why the DoJ had withdrawn the charge against Mr CHUNG when learning that the OAT had made an interim classification, at the request of a newspaper, that the photograph in question was indecent as distinct from obscene. She pointed out that since the interim classification of OAT had a bearing on whether to charge a person, such classification should have been obtained before charges were laid.

26. DDPP explained that had Mr CHUNG's case gone to trial, the DoJ would have obtained a classification from the OAT. The DoJ came to the view that there was no reasonable prospect to overturn the interim classification of OAT, having consulted the TELA and the Police on the matter. The DoJ concluded that the interests of justice required that the charge against Mr CHUNG be withdrawn.

Grounds for refusing bail

27. Ms Audrey EU and Mr Martin LEE expressed concern whether the prosecution's submission that Mr CHUNG was suspected of committing other offences constituted a reasonable ground for opposing bail. Mr LEUNG Kwok-hung echoed the concern and questioned whether the Police had been fair to disclose the alleged fraudulent crimes of Mr CHUNG to the magistrate when charges were not even laid. Ms Emily LAU expressed concern whether there was injustice when the magistrate denied bail on the ground of other alleged offences of which Mr CHUNG was not yet charged.

28. DDPP said that he could not comment on the alleged frauds practised by Mr CHUNG which were currently under investigation by the Police. The prosecutor asked for a long period of adjournment because investigation of fraudulent conduct would take a long time to conclude. He explained that given that bail was a serious issue, the court was given a broad discretion on the matter. Section 9G(2)(h) of the Criminal Procedure Ordinance (Cap. 221) (CPO) provided that the court, in forming an opinion on whether bail should be refused, could have regard to any other thing that appeared to be relevant. The fact that an accused person was being investigated for other serious offences would be relevant to the court in forming an opinion on whether the accused person would fail to surrender to custody as the court might appoint, or commit an offence while on bail.

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29. DDPP further said that much of the concern in respect of Mr CHUNG's case had arisen because of the length of his remand in custody. Lengthy adjournments, especially in fraud cases, were not uncommon. But granting an adjournment for eight weeks and refusing Mr CHUNG's application for bail did not mean he had to remain in custody for the entire eight weeks. The law accorded to an accused who was remanded in custody the right to be brought back to court every eight days to have the question of whether he should be granted bail reviewed. Unfortunately, Mr CHUNG waived this right and it was only as a consequence of this waiver that the order of the court refusing him bail resulted in an effective remand for the entire eight weeks.

30. The Chairman said that the court had refused to grant bail to Mr CHUNG who was charged with publication of one obscene photograph. She asked whether the prosecution had ever opposed a bail application in respect of the same charge. ACP replied that he was not aware of such a case in the past 20 years.

31. In response to Ms Emily LAU, DDPP and Mr Adrian Bell confirmed that it was not uncommon for the court or magistrate to refuse bail on grounds of suspected offences that were serious but not yet charged.

32. The Chairman asked whether the prosecution had a role to safeguard the liberty of a person when considering bail applications. She said that the prosecution should have considered two factors when opposing the bail of Mr CHUNG. First, Mr CHUNG was very co-operative; he admitted everything under caution. Second, Mr CHUNG had a proper abode in Hong Kong.

33. Ms Audrey EU echoed the view of the Chairman. She was surprised to learn that the magistrate had commented that "I think that even there is only photograph, a sentence of imprisonment will be inevitable upon conviction". She pointed out that when a person was charged, he was presumed to be innocent until convicted, and it was unusual not to grant bail. She also questioned the appropriateness for the prosecution to oppose bail submitted in relation to an offence charged, on the ground that the Police had to conduct further investigation into other alleged offences. She would have thought that the prosecution and the Police had a duty not to oppose bail, having regard to the presumption of innocence.

34. DDPP responded that the prosecution acted independently in that role. The prosecution had to be satisfied that the concerns raised by the Police were valid and could be substantiated, and that there was a proper basis for opposing bail. Based on the material available at that time, the prosecution held the view that the prosecutor was justified in taking the stance he did. DDPP pointed out that Mr CHUNG was represented by counsel. All the submissions were advanced by the prosecutor in open court and the defence counsel had the opportunity to address and challenge them. However, the defence counsel had not done so. The submissions of the defence and prosecution were also carefully considered by the judicial officer who in adjudicating the bail application, had presumed that the accused person was innocent and bail should be granted. The decision on bail of Mr CHUNG's case was made on the basis of section 9G of the CPO, and not because of the need for the Police to investigate into other alleged offences.

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35. Mr Eric CHEUNG said that he had not been prepared to discuss the issue of bail in order not to exert pressure on the Police who was having an ongoing investigation into the alleged offences of Mr CHUNG. Given that the discussion on bail application became inevitable at this meeting and trusting that the Police would act in an independent and impartial manner in determining whether to institute prosecution against Mr CHUNG for the other offences, he decided to give his views on the matter. He believed that the prosecution and the magistrate had been wrong in opposing bail in the case of Mr CHUNG. Unfortunately, Mr CHUNG had not lodged an appeal. Mr CHEUNG pointed out that if the Police decided not to prosecute Mr CHUNG on other alleged offences because of the lack of evidence, Mr CHUNG had already been remanded in custody for two weeks. He held the view that the scope of section 9G(2)(h) of the CPO was too wide. A judicial officer, in exercising discretion under section 9G(2)(h), could consider whether other alleged offences of which the accused person had not been charged were a relevant factor for refusing bail. However, the alleged offences must be related to the offences that had been charged.

36. The Chairman noted that the Administration had emphasised that Mr CHUNG had agreed that the article was obscene when interviewed under caution. She questioned whether it was fair to ask a defendant such a question as he was not in a position to advise himself on a question of law. He would not be aware that there was significant difference in admitting whether an article was obscene or indecent. She urged the Administration to review whether a defendant should be asked such a question when interviewed.

37. The Chairman thanked the deputations for attending the meeting.

IV. Recovery agents

(LC Paper No. CB(2)1357/07-08(05) - Background Brief prepared by the Legislative Council Secretariat on "Recovery agents"

LC Paper No. CB(2)1357/07-08(06) - Administration's paper on "Recovery agents")

Briefing by the Administration

38. Deputy Solicitor General (General)(Acting) of the DoJ (DSG (Atg)) briefed members on the recent developments of work in tackling problems caused by recovery agents (RAs) -

- (a) Public Education - a radio Announcement of Public Interest (API) to inform the public about the risks of the activities of RAs would be launched soon, and a television version of the API would be launched after completion of its production. The timing for broadcast of the APIs would be worked out with the Police to maximise their impact;

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- (b) Prosecution - nine cases relating to RAs were being investigated by the Police, seven of which were being actively pursued. Three arrests had been made and one case might result in prosecution. The Police had also stepped up patrol at spots where RAs had conducted extensive touting activities; and
- (c) Possible Legislation - the Administration did not rule out the possibility of introducing legislation to protect the public interest against the activities of RAs. Champerty and maintenance were common law offences in Hong Kong and offenders could be liable to prosecution. The Administration would review the need for legislation pending the outcome of prosecution actions.

Issues raised

Public Education

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

- (a) while the production of APIs was discussed at the last Panel meeting in April 2007, the timeframe for launching the APIs was still unavailable as at to-date; and
- (b) the proliferation of advertisements about services of RAs on TV and via various media could mislead the public into thinking that such services were legal. DoJ should advise media organisations about the legality of RAs' activities.

40. Ms Audrey EU sought advice from the Law Society's representatives on what could be done about the advertisements on services of RAs. Mr Ludwig NG considered that such advertisements amounted to champerty. Based on his experience, media and broadcasting companies would refrain from participating in activities that might infringe the law. Hence, by making them aware that the activities of RAs were illegal should help curb the proliferation of such advertisements. The Chairman asked whether the DoJ would consider the suggestion of Mr NG.

41. In response, DSG (Atg) said that -

- (a) for maximum effect, the timing for broadcasting the APIs would correspond with that of the Police's actions. The DoJ would liaise with the Police in this respect in late March 2008 and inform the Panel accordingly. The preliminary thinking was to broadcast the APIs for a period of six months, following which a review on the effectiveness of the APIs would be conducted;

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- (b) as regards Mr NG's suggestion, the DoJ was mindful that any actions to be taken should not be perceived as interfering with the freedom of expression of the media; and
- (c) the advertisements, per se, might not be unlawful. Nevertheless, the DoJ had referred to the Police information pertaining to such advertisements to facilitate their investigation/prosecution.

Law
Society

42. Ms Audrey EU suggested that the Law Society should provide information on such advertisements to the relevant authorities for action. She urged the Law Society and the DoJ to examine the legality of such advertisements, so that pre-emptive action could be taken before any champertous contracts were entered into by RAs with the accident victims. The Chairman pointed out that the Administration had previously made reference to a number of laws and rules of professional conduct which would help determine the legality of RAs' activities, as set out in paragraph 6 of the background brief [LC Paper No. CB(2)1357/07-08(05)]. However, it would be in the public interest for the DoJ to issue a clear-cut statement on the legality of RAs.

Prosecution

43. Mr Osmond LAM of the Bar Association said that the Bar Association maintained its previous view that contracts between RAs and accident victims were champertous and unenforceable, and lawyers who engaged in the performance of champertous agreements would be liable to criminal prosecution.

Possible Legislation

44. Mr Tommy WONG, Member of the Law Society's Working Party on RAs, questioned why the Administration had to defer consideration of possible legislation pending the outcome of prosecution actions, when champerty and maintenance were clearly common law offences in Hong Kong.

45. DSG (Atg) pointed out that the judgment of a Court of Final Appeal (Civil) case in February 2007 [FACV9&10/2006] confirmed that "the common law rules making maintenance and champerty criminal offences ... were part of Hong Kong law prior to 1997 and remain applicable by virtue of Article 8 of the Basic Law". In the light of the judgment, it would be prudent for the Administration to consider whether statutory law was still required, and if so, whether the law should regulate the activities of RAs or the contracts of RAs. As enacting legislation against the activities of RAs would have wide implications, especially on business activities, the public would need to be consulted on the legislative proposal.

46. Mr LEUNG Kwok-hung remained unconvinced that the consideration of possible legislation should be deferred. He considered that legislation regulating the activities of RAs should be introduced as soon as possible to remove any uncertainties in the law. The Administration should proceed with the public consultation exercise soon.

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47. Since the discussion of RAs was relevant to the item, "Provision of legal aid services" scheduled for discussion at the Panel meeting on 26 May 2008, the Chairman requested the DoJ to provide an update on the timeframe for launching the APIs and other developments relating to the issue of RAs before the meeting.

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V. Applicability of HKSAR laws to offices set up by the Central People's Government in HKSAR

(LC Paper No. CB(2)1356/07-08(01) - Background Brief prepared by the Legislative Council Secretariat on "Applicability of Ordinances to offices set up by the Central People's Government in HKSAR"

LC Paper No. CB(2)1356/07-08(02) - Administration's paper on "Applicability of HKSAR laws to offices set up by the Central People's Government in HKSAR")

Legislative work relating to ordinances that expressly bind the Government but are silent on their applicability to offices set up by the CPG in the HKSAR (**Annex A** of LC Paper No. CB(2)1356/07-08(02))

48. In view of time constraints, members agreed to defer discussion of the item to the next Panel meeting on 28 April 2008. For the time remaining, the Chairman invited members to raise questions which she hoped the Administration could respond at one go at the next meeting.

49. Permanent Secretary for Constitutional and Mainland Affairs (PSCMA) said that the Government planned to amend the following four ordinances in the 2008-2009 legislative session, so that they would also apply to the offices set up by the Central People's Government (CPG) in the Hong Kong Special Administrative Region -

- (a) the Legislative Council Commission Ordinance (Cap.443);
- (b) Plant Varieties Protection Ordinance (Cap.490);
- (c) Patents Ordinance (Cap.514); and
- (d) Registered Designs Ordinance (Cap.522).

50. As only four ordinances had been proposed for amendment, Ms Emily LAU and Ms Audrey EU questioned why the progress of the review of the applicability of ordinances to CPG offices had been so slow. Ms LAU was concerned that the delay of the Government in introducing legislative amendments to extend the application of the relevant ordinances to the CPG offices could convey to the public the message that the CPG offices were above the law. PSCMA responded that whether certain ordinances expressly bound the CPG offices and whether such offices should abide by certain ordinances were separate issues. The fact that a CPG office was not bound by a specific ordinance did not mean that the office concerned was above the law. The Chairman requested the Administration to elaborate its view in writing.

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Admin 51. The Chairman asked why only four ordinances had been selected for legislative amendment in the 2008-2009 session and the status of the remaining ordinances. Ms Audrey EU enquired about the timeframe for completing the review of the remaining ordinances and the difficulties encountered in the discussions with the CPG.

Adaptation of 35 Ordinances that expressly bind or apply to the "Crown" (**Annex B** of LC Paper No. CB(2)1356/07-08(02))

Admin 52. In response to Mr Martin LEE, PSCMA said that each of the ordinances in **Annex B** of the Administration's paper had been/would be reviewed. The Chairman asked about the plan for the adaptation of the remaining ordinances including the Crown Proceedings Ordinance (Cap. 300), and the implications of not proceeding with the adaptation exercise. She was also concerned about the progress of the adaptation exercise involving the Hong Kong Garrison and military references.

Admin 53. The Administration was requested to revert to the Panel on the queries raised by members at the next meeting on 28 April 2008.

54. Mr LEUNG Kwok-hung asked whether the Administration could make available copies of the correspondence between the CPG and the Administration on the issue for the Panel's reference. PSCMA responded that the Administration would report to the Panel the outcome of its deliberations with the CPG. The exchange of correspondence would not be made public as a matter of policy.

(Post meeting note: As there are more than three agenda items for the next meeting, the Chairman has subsequently instructed that the item "Determination of judicial remuneration" be deferred to a future meeting.)

55. There being no other business, the meeting ended at 6:50 pm.

Council Business Division 2
Legislative Council Secretariat
23 May 2008