

**立法會**  
**Legislative Council**

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LC Paper No. CB(2)367/08-09  
(These minutes have been seen  
by the Administration)

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

**Minutes of special meeting**  
**held on Monday, 20 October 2008, at 10:30 am**  
**in the Chamber of the Legislative Council Building**

- Members present** : Dr Hon Margaret NG (Chairman)  
Hon Albert HO Chun-yan (Deputy Chairman)  
Hon James TO Kun-sun  
Hon LAU Kong-wah, JP  
Hon Miriam LAU Kin-yee, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Paul TSE Wai-chun
- Members attending** : Hon WONG Kwok-hing, MH  
Hon Paul CHAN Mo-po, MH, JP
- Member absent** : Dr Hon Priscilla LEUNG Mei-fun
- Public Officers attending** : Item I  
Department of Justice  
  
Mr WONG Yan-lung, SC  
Secretary for Justice  
  
Mr Ian Wingfield  
Solicitor General  
  
Ms Susie HO  
Director of Administration & Development  
  
Mr John Reading, SC  
Deputy Director of Public Prosecutions

Home Affairs Bureau

Mr TSANG Tak-sing, JP  
Secretary for Home Affairs

Mr Benjamin CHEUNG, JP  
Director of Legal Aid

Miss Christine CHOW  
Principal Assistant Secretary for Home Affairs (Civic Affairs)<sup>2</sup>

**Clerk in attendance** : Miss Flora TAI  
Chief Council Secretary (2)<sup>3</sup>

**Staff in attendance** : Ms Amy YU  
Senior Council Secretary (2)<sup>3</sup>

Mrs Fanny TSANG  
Legislative Assistant (2)<sup>3</sup>

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**I. Briefing on the Chief Executive's 2008-2009 Policy Address**

[LC Paper Nos. CB(2)71/08-09(01) and (02), the 2008-2009 Policy Address : "Embracing New Challenges" and the 2008-2009 Policy Agenda booklet]

**Briefing by the Administration**

The Chairman welcomed representatives of the Administration to the meeting to brief the Panel on the initiatives in the 2008-2009 Policy Agenda relating to the Department of Justice (DoJ) and those of the Home Affairs Bureau (HAB) in respect of legal aid.

2. At the invitation of the Chairman, Secretary for Justice (SJ) and Secretary for Home Affairs (SHA) each gave a presentation to highlight the policy initiatives within their respective purview for 2008-2009. Copies of their speaking notes (Chinese version only) were tabled at the meeting and issued vide LC Paper Nos. CB(2)94/08-09(01) and (02) on 21 October 2008.

## **Issues raised by members**

### Legal aid services

#### *Expansion of Supplementary Legal Aid Scheme*

3. Ms Miriam LAU said that the current legal aid system was increasingly being restricted to those with little or no means at all, while a vast majority of middle-class people had no access to legal aid services. She further pointed out that there was general support among the legal practitioners and the public for the expansion of the Supplementary Legal Aid Scheme (SLAS) so that middle class as well as small and medium enterprises could be eligible for legal aid and have access to justice.

4. In response to Ms LAU's enquiry about the Administration's current position, SHA stressed that as SLAS was self-financing in nature, any proposal to extend the scheme should not jeopardize its financial viability. On the basis of such fundamental principle, the Administration was prepared to continue to listen to members' views on improving the accessibility to SLAS.

5. Ms Audrey EU also urged the Administration to consider expanding SLAS to provide the middle class as well as small and medium enterprises greater access to justice. She opined that the expansion of SLAS would not have any adverse impact on the financial viability of the scheme, given that only applicants whose case or defence had been assessed to have a reasonable chance of success would be granted assistance under the scheme, and a percentage of damages or compensation would be recovered from successful SLAS cases and paid into the Supplementary Legal Aid Fund which financed the scheme.

6. Noting the Administration's target of consulting stakeholders on its specific proposals for the next five-yearly review of the criteria for assessing financial eligibility of legal aid applicants in the first quarter of 2009, Mr LAU Kong-wah enquired whether the expansion of SLAS would be one of the specific proposals put forth for consultation.

7. SHA responded that when formulating the specific proposals for financial eligibility limits, the Administration would have regard to the views expressed by the Panel and other stakeholders, including the views relating to the expansion of SLAS. In response to Mr LAU Kong-wah's concern whether the Administration would be stern against any expansion of SLAS, SHA explained that arising from the transfer of the legal aid portfolio to HAB in July 2007, there was a concern that policy changes in respect of legal aid would be made. His remark at the outset of his presentation that it was not the Administration's intention to make any significant policy changes in respect of legal aid was meant only to allay such concern. He stressed that the Administration was open-minded about possible expansion of SLAS.

*Criminal legal aid fee system*

8. Ms Miriam LAU said that while the Administration had reached broad consensus with the two legal professional bodies on the proposed structure of the criminal legal aid fee system, the Administration and the Law Society of Hong Kong (Law Society) had divergent views on the proposed rates for various payment items. Noting that the Administration would give further response to the Law Society's proposal before the end of 2008, Ms LAU asked whether the differences between the Administration and the Law Society had been narrowed sufficiently to reach a mutually acceptable solution.

9. SHA responded that the proposed fee structure which operated on a marked-brief basis would bring about improvements to the remuneration for lawyers engaging in criminal legal aid work. However, it would be very difficult for the Administration under the prevailing economic conditions to accept completely the rates proposed by the Law Society because it would have significant financial implications on the Government. He added that the Administration recognized that there was room for improving the current rates and would make its best endeavour to reach a mutually acceptable proposal with the Law Society.

*Extension of legal aid to cover mediation of legally aided matrimonial cases*

10. Noting the Administration's aim of introducing the legislative proposal in mid-2009 to extend legal aid to cover mediation in legally aided matrimonial cases, Ms Miriam LAU urged the Administration to expedite the process with a view to introducing the legislative proposal in early 2009, so that the proposed extension of legal aid could be implemented in tandem with the implementation of the Practice Direction on Alternative Dispute Resolution (ADR) scheduled in April 2009.

11. SHA responded that the Practice Direction on ADR scheduled for implementation in April 2009 and the proposed extension of legal aid to cover mediation in legally aided matrimonial cases were two separate matters, and the latter was confined to mediation for matrimonial cases only.

12. Ms Miriam LAU said that she was well aware that the said Practice Direction and the extension of legal aid to cover mediation in legally aided matrimonially cases were separate matters. Given that the consultation work on the proposed extension had been completed and the relevant legislative proposal should be relatively simple and straight-forward, she considered that the legislative process could be expedited which would be in line with the Administration's policy of promoting the development of mediation services.

13. SHA said that the Administration would strive to advance the introduction of the amendment bill to April 2009. SJ supplemented that the Administration was actively developing mediation services on different fronts. Apart from the promulgation of the Practice Direction on ADR and the extension of legal aid to cover mediation for legally aided matrimonial cases, the Administration had also worked

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closely with the Judiciary on a number of pilot schemes to develop mediation services in other areas.

*Independent statutory legal aid authority*

14. In response to Mr James TO's enquiry about the progress of the Legal Aid Services Council (LASC)'s review on the establishment of an independent statutory legal aid authority, SHA said that LASC was expected to complete the study by the end of 2008. The Administration would revert to the Panel after consideration of the outcome of the LASC's study.

15. Mr James TO said that the issue of establishing an independent statutory legal aid authority, which was crucial in enhancing confidence in the rule of law and administration of justice, had been discussed for years. He recalled that during past discussions on the issue, the Administration's arguments against the proposed establishment were based mainly on costs and staffing considerations, rather than a matter of principle. He enquired whether there was any change in the Administration's stance. SHA stressed that as establishing an independent statutory legal aid authority would entail significant policy changes, thorough discussions and public consultation must be conducted before making any decision.

*Report on Conditional Fees published by the Law Reform Commission*

16. The Chairman said that the Law Reform Commission's Report on Conditional Fees published in July 2007 had recommended, inter alia, the setting up of a Conditional Legal Aid Fund to screen applications for the use of conditional fees, brief out cases to private lawyers, finance the litigation, and pay the opponent's legal costs should the litigation prove unsuccessful. The proposed Fund would engage the private lawyers on a conditional fee basis while the clients would be charged on a contingency fee basis. At the Chairman's request, SHA agreed to revert to the Panel on the Administration's current view on the relevant recommendations as soon as possible.

HAB

Arbitration services

17. On the initiative of promoting Hong Kong's development as a regional centre for arbitration services, Mr Paul TSE sought information on the respective numbers of local and overseas legal practitioners handling arbitration cases in Hong Kong. He remarked that it would throw light on the extent to which the local legal community could benefit from such a development.

18. SJ said that in terms of the number of arbitration cases handled, the Hong Kong International Arbitration Centre (HKIAC) ranked second in Asia and fourth globally last year. To his understanding, the cases of HKIAC were handled mostly by local legal practitioners. SJ added that the Administration would liaise with HKIAC and provide the requisite information if available.

DoJ

Development of mediation services

19. The Chairman pointed out that there were concerns among the legal practitioners about the onerous requirements imposed on them by the draft Practice Direction on ADR. She explained that an ADR Certificate was required to be filed in court at the same time as the case management questionnaire, but the Certificate further required the legal representative to confirm that the relevant information concerning ADR, such as the procedures involved, its costs vis-à-vis litigation, and cases suited for its employment, etc, had been explained to the client. In view of such concern, the Chairman asked what measures would be taken by the Administration to enhance legal practitioners' understanding of ADR. She further suggested that the Administration should come up with another word to replace the word "alternative" in ADR, given its negative connotation of being unorthodox.

20. SJ responded that the Working Group on Mediation (the Working Group), chaired by him and comprised representatives from DoJ, the Judiciary, the Legal Aid Department, the two legal professional bodies and relevant mediation bodies, had discussed the concerns of legal practitioners over the draft Practice Direction on ADR. It was his understanding that the two legal professional bodies would keep in close touch with the Judiciary on the preparedness of the legal profession for the full-scale implementation of the Practice Direction in April 2009. DoJ would also consult its staff engaged in litigation work on the draft Practice Direction. He assured members that the Working Group would follow up on the progress of the preparation of the legal profession for the implementation of the Practice Direction.

21. SJ further said that the Working Group recognized that the successful development of mediation would depend on wide acceptance by the legal profession and the public at large. To achieve this, the legal profession and the public must gain and enhance their understanding of mediation and its advantages. The quality of mediators was also of crucial importance, as high quality mediation services would increase the prospect of achieving success in mediating satisfactory settlements, which would in turn boost public confidence in using such services. In this regard, the Working Group had been working on the accreditation and training, as well as public education and publicity fronts with a view to facilitating the successful development of mediation. On the term ADR, SJ said that it was an internationally recognized term. Nonetheless, he took note of the Chairman's views and would welcome any suggestion of a different Chinese rendition to be used for the word "alternative".

22. The Chairman considered it important to provide legal practitioners with more information on mediation, such as the types and charges of services available, list of service providers, level of services, availability of legal aid to fund the costs of mediation, etc. to enhance their understanding of this means of dispute resolution.

23. SJ responded that there were currently a number of well-established organizations in Hong Kong providing mediation services and the Law Society was one of these organizations. In addition, some solicitors and barristers had obtained internationally recognized qualifications in mediation. The Working Group would

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work together with these parties on ways to enhance the legal profession's understanding of mediation services. At the request of the Chairman, SJ agreed to provide information on the mediation service providers for members' reference.

DoJ

24. Ms Audrey EU said that mediation and arbitration would be desirable means to resolve questions of compensation between the consumer investors in Lehman-Brothers-related products and the distributing banks concerned. She asked whether any assistance would be provided by the Administration in this regard.

25. SJ said that he agreed in principle that mediation was a suitable means of resolving recent disputes relating to Lehman-Brothers-related products, instead of resorting to court proceedings which might be dragged on for a long time. In this regard, he had advised the Financial Services and the Treasury Bureau (FSTB) that mediation should be used wherever possible. He understood that FSTB and the Hong Kong Monetary Authority (HKMA) had been in contact with mediation organizations to see how they could provide such services. SJ further said that mediation would be preferable to arbitration as the latter was more adversarial in nature and would incur higher costs. He stressed that the initiation of mediation and arbitration required the mutual consent of both parties.

26. Ms Audrey EU further enquired when the mediation process could be activated if both parties agreed to do so. SJ reiterated that FSTB and HKMA had already contacted mediation organizations the week before. He expected that it should only take weeks for these organizations to provide mediation services if needed.

27. The Deputy Chairman asked whether consideration would be given to providing financial support to the consumer investors in Lehman-Brothers-related products to cover the costs of mediation/arbitration, especially for those in financial difficulties. SJ responded that while he could advise on the viability and benefits of using mediation/arbitration mechanism to settle the dispute and assist in contacting the mediation organizations for the provision of services, he was not in a position to advise the Panel of the assistance to be provided by the Administration in this regard as it would be outside the purview of his office.

28. The Deputy Chairman further said that the Chief Executive had undertaken to inject funding into the Consumer Legal Action Fund administered by the Consumer Council if necessary to assist consumer investors in Lehman-Brothers-related products who needed to bring representative action against the distributing banks. The relevant policy bureau should therefore monitor closely the situation and ensure injection of adequate funding into the Fund when necessary. He added that members should be advised of the follow-up actions to be taken by the Administration in this regard. At the suggestion of the Chairman, members agreed that the Panel should write to the relevant policy bureaux and regulatory bodies on the issues raised by the Deputy Chairman.

Clerk

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Limited liability partnership for legal practice

29. The Chairman and Ms Audrey EU asked about the progress made by the Administration in taking forward the legislative work of limiting the liability of solicitors for the negligence of their partners. SJ responded that as he had previously advised in his letter to the Chairman of the Panel dated 10 July 2008, DoJ was prepared to consider Limited Liability Partnership (LLP) among legal professionals and had been in discussion with the Law Society on the related policy and legislative issues. SJ added that as the drafting instructions for the legislative proposal had yet to be finalized, he could not comment on the legislative timetable at this stage.

Solicitors' rights of audience

30. Responding to the enquiries of the Chairman and Mr Paul TSE, SJ said that it was the Administration's plan to introduce an amendment bill into the Legislative Council (LegCo) within the current legislative session to extend solicitors' right of audience which was recommended by the Working Party on Solicitors' Rights of Audience appointed by the Chief Justice.

Workload statistics in the Prosecutions Division

31. Referring to the statistics on the workload of the Prosecutions Division (PD), DoJ in the past five years provided in the Administration's paper [LC Paper No. CB(2)2634/07-08(01)], Mr LAU Kong-wah requested the Administration to provide supplementary statistics on the listing time for trials handled by PD during the same period, in order to enable members to have a fuller understanding not only of the workload, but also the level and quality of services, of PD. SJ agreed to provide the information requested by Mr LAU as far as practicable.

DoJ

Enforcement of Labour Tribunal awards

32. Mr WONG Kwok-hing enquired about the progress of the legislative work of making non-compliance with Labour Tribunal (LT) awards a criminal offence. SJ responded that the Administration consulted the Panel on Manpower on the relevant legislative proposal at its meeting on 8 July 2008 which included making non-compliance with LT awards a criminal offence, empowering LT to order defaulting employers to pay additional sums to the employees, and empowering LT to order disclosure of the financial details of defaulting employers. SJ further said that the Administration was thrashing out the legislative and implementation details and aimed to introduce the legislative proposal into LegCo in the second half of the 2008-2009 session.



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## **II. Items for discussion at the regular meeting in November 2008**

[LC Paper No. CB(2)60/08-09(01)]

### Court Prosecutors system

33. At the Chairman's suggestion, members agreed that having regard to the latest developments on the CP grade as set out in the Administration's paper [LC Paper No. CB(2)2634/07-08(01)] and SJ's remark made earlier at the meeting about the recruitment of court prosecutors, the Panel should discuss the subject of "Court Prosecutors (CP) system" at the next regular meeting to be held on 24 November 2008. Members also agreed that apart from the information requested by Mr LAU Kong-wah in paragraph 31 above on the listing time for trials, the Administration should also provide an update on the latest developments on its review of the CP grade, if any, since July 2008. Members further agreed that the two legal professional bodies would be invited to join the discussion of the subject matter.

DoJ

### Review of provision of legal aid services

34. At the Chairman's suggestion, members agreed that, in view of concerns expressed by members on various issues relating to legal aid at the meeting, the Panel should conduct a preliminary discussion on the provision of legal aid services at the next meeting.

## **III. Any other business**

35. There being no other business, the meeting ended at 11:50 am.

Council Business Division 2  
Legislative Council Secretariat  
28 November 2008