

立法會
Legislative Council

Ref : CB2/PL/AJLS

LC Paper No. CB(2)1063/08-09
(These minutes have been seen
by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Tuesday, 13 January 2009, at 4:30 pm
in Conference Room A 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 Audrey EU Yuet-mee, SC, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon Paul TSE Wai-chun

Member attending : Hon Ronny TONG Ka-wah, SC

Member absent : Hon Miriam LAU Kin-yee, GBS, JP

Public Officers attending : Item IV
Judiciary Administration
Miss Emma LAU
Judiciary Administrator
Mr NG Sek-hon
Deputy Judiciary Administrator (Operations)

Item V
Judiciary Administration
Miss Emma LAU
Judiciary Administrator

Mr NG Sek-hon
Deputy Judiciary Administrator (Operations)

Miss Clara TANG
Assistant Judiciary Administrator (Development)

Item VI

Department of Justice

Mr Ian Wingfield
Solicitor General

Administration Wing, Chief Secretary for Administration's Office

Miss Jennifer MAK
Director of Administration

Miss Agnes WONG
Deputy Director of Administration

Judiciary Administration

Miss Emma LAU
Judiciary Administrator

Miss Annie TANG
Deputy Judiciary Administrator (Development)

Attendance by : Item V
invitation

The Law Society of Hong Kong

Mr Lester HUANG
President

Ms Joyce WONG
Director of Practitioners Affairs

Ms Ada FUNG
Assistant Director, Professional Development

Clerk in : Miss Flora TAI
attendance : Chief Council Secretary (2)3

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Amy YU
Senior Council Secretary (2)3

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Confirmation of minutes of meeting
[LC Paper No. CB(2)584/08-09]

The minutes of the meeting held on 24 November 2008 were confirmed.

II. Information papers issued since last meeting

2. Members noted that no information paper had been issued since the last meeting.

III. Items for discussion at the next meeting
[LC Paper Nos. CB(2)601/08-09(01) - (03)]

Discussion items for the next meeting

3. In accordance with the list of items tentatively scheduled for discussion in the current session [LC Paper No. CB(2)601/08-09(01)], members agreed to discuss the following items at the next regular meeting scheduled for 23 February 2009 -

- (a) Recovery agents; and
- (b) Arbitration Bill.

Other issues raised for follow-up

Mode of trial

4. The Chairman said that in his speech delivered at the Ceremonial Opening of the Legal Year 2009 on 12 January 2009, the Chairman of the Hong Kong Bar Association (the Bar Association) had raised an issue of concern that many commercial fraud cases, including the substantial and complex ones, were heard before the District Court rather than in the Court of First Instance before a jury. There was concern that the current practice of resting the choice of Court solely with the Prosecution would deny the defendant the right to a jury trial. To facilitate further consideration of the issue, the Chairman suggested and members agreed that the Department of Justice (DoJ) should be requested -

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- (a) to elaborate on the factors the Prosecution would have regard to in the selection of the venue for trial; and
- (b) to advise whether there was any plan to review the current practice of giving the Prosecution the prerogative to select the venue for trial.

Denial of legal representation to claimants for protection under The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

5. The Chairman further said that in his speech at the Ceremonial Opening of the Legal Year 2009, the Chairman of the Law Society of Hong Kong (the Law Society) had expressed concern over the findings in the judgment delivered by Hon Justice Saunders on 5 December 2008 on six judicial review applications concerning the screening process adopted by the Director of Immigration and the Secretary for Security in dealing with claims for protection under CAT. According to the findings of the learned Judge, claimants for protection under CAT had been denied legal representation and access to legal aid. The Chairman said that while CAT fell within the purview of the Panel on Security, right to legal representation and access to legal aid were issues of concern to this Panel. The Chairman suggested and members agreed that these issues of concern should be conveyed to the Panel on Security for its consideration during the forthcoming discussion of the concluding observations of the Committee Against Torture on the second periodic report of HKSAR under CAT.

(Post-meeting note: At the suggestion of the Chairman and with the agreement of the Chairman of the Panel on Security, the Clerk to the Panel on Security had requested the Security Bureau -

- (a) to address the issues raised in the relevant judgment particularly those relating to right to legal representation and access to legal aid;
- (b) to explain the administrative arrangements to be made by the Legal Aid Department and the Immigration Department to ensure access of the claimants under CAT to legal aid.)

IV. Operation of the Resource Centre for Unrepresented Litigants
[LC Paper Nos. CB(2)601/08-09(04) and (05)]

Briefing by the Judiciary Administration

6. Judiciary Administrator (JA) briefed members on the paper provided by the Judiciary Administration [LC Paper No. CB(2)601/08-09(04)] which highlighted the enhancement of the services and facilities in the Resource Centre for Unrepresented Litigants (the Resource Centre) in the Judiciary in preparation for the impending implementation of the Civil Justice Reform (CJR) scheduled for 2 April 2009.

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Members noted that in the light of the implementation of CJR and to facilitate the provision of services to unrepresented litigants, a revamped Steering Committee on Resource Centre for Unrepresented Litigants (the Steering Committee) was set up in the Judiciary under the chairmanship of Madam Justice Carlye CHU in February 2008 to advise on policy and operational matters relating to the Resource Centre.

Discussions

User survey on the Resource Centre

7. Referring to the user satisfaction survey conducted in 2005 on the services of the Resource Centre, the Deputy Chairman enquired how many of the respondents were unrepresented litigants who had used the services of the Resource Centre. JA responded that the Judiciary Administration did not have such information. Nonetheless, the survey was conducted among users of the Resource Centre who were primarily unrepresented litigants who had either commenced civil proceedings or were considering doing so. The Deputy Chairman, however, pointed out that not all users of the Resource Centre were unrepresented litigants, and some of them might be visiting the Resource Centre merely for interest, such as law students. In his view, in order to identify the service needs of the target users of the Resource Centre, user surveys should target at unrepresented litigants who had used the services provided at the Resource Centre. Their views should be sought specifically on the adequacy of the existing services in meeting their needs and areas for improvement. JA said that the Deputy Chairman's views would be taken into account in the conduct of any future user surveys.

Frequently asked questions raised by unrepresented litigants

8. The Deputy Chairman further enquired about the types of questions most frequently raised by unrepresented litigants, and whether staff at the Resource Centre were able to answer such questions. JA responded that many questions were related to procedures for making certain applications, such as application for appeal or for issuance of writ of execution. Questions relating to costs were also frequently raised by unrepresented litigants. All staff in the Resource Centre had been properly trained to provide assistance to unrepresented litigants. They were conversant with court rules and procedures. The Judiciary had provided manuals to assist the staff in answering questions frequently asked by unrepresented litigants. The Judiciary had also produced a series of pamphlets containing practical information on court proceedings in simple language. Staff operating the Resource Centre would help explain the content of these pamphlets to unrepresented litigants where necessary. Should they encounter any difficulties in responding to questions raised by unrepresented litigants, they would seek the assistance of more experienced colleagues, and where necessary, the advice of the Registrar and Masters.

9. In response to the Deputy Chairman, JA said that sample court forms commonly used by litigants in civil proceedings were available at the Resource Centre and its website for reference of unrepresented litigants.

Enhancing the scope of services at the Resource Centre

10. The Chairman said that during past discussions on the subject, members had expressed concern whether the services of the Resource Centre were adequate to meet the needs of unrepresented litigants. One of the main reasons for such concern was that the Resource Centre could only provide unrepresented litigants with information on court rules and procedural matters, but not legal advice. It had been suggested by members in the past that free legal advice or assistance be provided at or through the Resource Centre by free legal service providers. However, the relevant pro bono service providers had indicated then that they were not able to do so due to manpower and resource constraints.

11. Mr LAU Kong-wah noted from paragraph 8 of the background brief prepared by the Legislative Council (LegCo) Secretariat [LC Paper No. CB(2)601/08-09(05)] that according to the user satisfaction survey on the Resource Centre conducted by the Judiciary Administration in July 2005, a majority of the respondents considered that it would be helpful if assistance could be provided by social workers or law students to help them understand what happened during court proceedings. He asked whether consideration had been given to this suggestion.

12. JA said that the findings of the survey conducted in 2005 regarding demand for extended scope of services in the Resource Centre, such as assistance provided by social workers or law students to help unrepresented litigants understand court proceedings and provision of free legal advice, had been examined by the Consultative Committee on the Resource Centre (Consultative Committee) set up between 2004 and 2006. Having regard to the importance of maintaining the impartiality and neutrality of the Judiciary and the availability of free legal services in the community, the Consultative Committee after exchanging views with the relevant pro bono legal service providers had come to the view that the proposals on extending the scope of services of the Resource Centre should not be further pursued. Nonetheless, information pamphlets on pro bono service providers had been made available in the Resource Centre. The computer terminals in the Resource Centre were also interlinked with a number of websites providing information and services to unrepresented litigants.

13. Mr LAU Kong-wah pointed out that assistance rendered by social workers and law students at the Resource Centre did not involve the provision of legal advice and as such would not compromise the neutrality of the Judiciary. The Chairman asked JA to further explain why the Consultative Committee had decided not to follow up the suggestion. JA said that the viability of providing such service at the Resource Centre would also depend on whether the universities concerned had plans and resources to do so. JA reiterated that the Consultative Committee had liaised with the relevant organizations, including the law faculties of local universities, on opportunities for providing pro bono services at or through the Resource Centre, and had decided not to further pursue the matter at that time. JA further informed members that the Judiciary was approached by the Faculty of Law of the University of Hong Kong concerning some proposals regarding provision of assistance to litigants

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Jud Admin

by law students in certain areas, though this was not related to the Resource Centre. The Chairman requested and JA agreed to provide further information on such proposal at an appropriate time for members' reference.

Jud Admin

14. Dr Priscilla LEUNG said that it would be helpful if law students could help explain the pamphlets on court procedures to unrepresented litigants in the Resource Centre. In response to Dr LEUNG, JA said that there were currently five staff manning the Resource Centre and there was plan to augment its manpower after the implementation of CJR in April 2009. She assured members that staff in the Resource Centre were able to cope with the task of explaining the pamphlets to unrepresented litigants. Nonetheless, she noted members' views on exploring possible collaboration with law students in providing assistance to unrepresented litigants and would convey members' views to the Steering Committee for consideration. She also undertook to revert to members in this regard.

15. Dr Priscilla LEUNG said that to enhance assistance to unrepresented litigants, serious consideration should be given to expanding the scope of services in the Resource Centre to include the provision of legal advice. She suggested engaging one lawyer on a full-time or part-time basis to provide preliminary legal advice to unrepresented litigants in the Resource Centre, with supporting services provided by law students on a pro-bono basis. She considered such a proposal worth pursuing as it would greatly enhance the assistance to unrepresented litigants at relatively little cost to the public purse.

16. JA reiterated that in view of the fundamental principle that the Judiciary must be and must be seen to be fair and impartial in adjudicating disputes, the Resource Centre would not offer any legal advice or comment on the merits of any case. It was the Judiciary's view that the Executive Authorities and/or the legal profession would be in a more appropriate position to provide such service.

17. The Chairman pointed out that the crux of the problem was the Administration's unwillingness to fund the provision of legal advice at the Resource Centre. It had been suggested in the past that free legal advice service akin to that provided under the Free Legal Advice Scheme of the Duty Lawyers Service be given to unrepresented litigants for civil cases in an office in the High Court Building located near the Resource Centre, but the Administration had refused to provide financial support for such service.

18. Noting from paragraph 7 of the Judiciary Administration's paper that in the past five years, about 40% of the contested civil proceedings in the High Court and about 50% of those in the District Court involved unrepresented litigants, the Deputy Chairman pointed out that the growing number of unrepresented litigants had become a burden on the court's resources, as judges needed to devote more time to explain legal proceedings to them. He shared the view that the Administration should provide resources for enhancing the services to the Resource Centre which could help relieve the strain exerted by the growing number of unrepresented litigants on judicial time and resources.

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19. Mr LAU Kong-wah appreciated that having regard to the paramount importance of maintaining the courts' image of impartiality, it would be inappropriate for the Judiciary itself to provide legal advice service at the Resource Centre. He asked whether it would be viable for the Judiciary to provide accommodation near the Resource Centre for pro-bono service providers such as the two legal professional bodies to offer assistance to unrepresented litigants. JA responded that subject to the principle of maintaining the neutrality and impartiality of the Judiciary not being compromised, the Judiciary Administration was prepared to facilitate the initiatives of the Executive Authorities and/or pro bono service providers in rendering assistance to unrepresented litigants.

20. The Chairman said that to enhance the provision of services for unrepresented litigants, one possible option was to set up a free legal advice scheme, similar to the Duty Lawyer Scheme, with volunteer lawyers giving free preliminary legal advice to unrepresented litigants at an office located near the Resource Centre. The office accommodation would be provided by the Judiciary while the costs of operating such service, which involved mainly the hiring of a few administrative staff, would be borne by the Administration. After discussion, members agreed that the Panel should write to the Director of Administration (D of Admin) conveying its views on and support for the provision of publicly-funded free legal advice service to unrepresented litigants. The Chairman said that she would follow up with the two legal professional bodies to seek their views on the feasibility and implementation of the proposed free legal advice scheme. She further instructed the Clerk to copy the letter to the Steering Committee and the two legal professional bodies.

Clerk

V. Implementation of Civil Justice Reform

[LC Paper Nos. CB(2)601/08-09(06) and (07), CB(2)620/08-09(01) and CB(2)638/08-09(01)]

Preparation of the Judiciary and the legal profession for the implementation of CJR

21. The Chairman said that the issue was referred to the Panel for follow-up by the former Subcommittee on Draft Subsidiary Legislation Relating to CJR, which had requested the Judiciary Administration to report to the Panel by January 2009 on the progress of preparation by the Judiciary and the legal profession for the implementation of CJR.

22. JA introduced the Judiciary Administration's paper [LC Paper No. CB(2)601/08-09(06)] which reported on the progress in relation to the implementation of CJR scheduled for 2 April 2009. She also referred members to an extract from the Chief Justice (CJ)'s speech at the Ceremonial Opening of the Legal Year 2009 on 12 January 2009 concerning CJR which was tabled at the meeting. The extract contained updates on information set out in paragraphs 10 and 18 of Judiciary Administration's paper.

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(*Post-meeting note*: The extract was issued vide LC Paper No. CB(2)673/08-09(01) on 14 January 2009.)

23. JA said that on the Law Society's request for deferring the implementation of the Practice Direction on Mediation referred to in paragraph 10 of the Judiciary Administration's paper, CJ had announced that he had decided to accede to the request and the effective date of the said Practice Direction would accordingly be postponed to 1 January 2010. As regards the monitoring mechanism stated in paragraph 18 of the paper, CJ had announced his decision of setting up a Committee (the Monitoring Committee) to monitor the working of the reformed civil justice system after the implementation of CJR and to make suggestions to ensure its effective operation. The Committee would be chaired by the Chief Judge of the High Court and would comprise judges, a barrister, a solicitor, a member of DoJ and the Legal Aid Department and an experienced mediator.

24. Mr Lester HUANG, President of the Law Society, briefed members on its submission [LC paper No. CB(2)620/08-09(01)] outlining its CJR training programme for solicitors between October 2008 and March 2009. The training programme comprised general sessions providing an overview of CJR as well as a series of specialized modules on different areas of CJR. A training session on the Practice Direction on Mediation would also be held in February 2009 to assist solicitors to understand their duties under the Practice Direction. The training programme commenced in October 2008 and the Law Society expected that by March 2009 it would have covered the training needs of over 2 500 solicitors. Overall, the Law Society was satisfied with the participation of its members at the training programme and was confident that the solicitors' branch of the legal profession would be ready for the implementation of CJR in April 2009.

25. Members noted from the letter of the Chairman of the Bar Association dated 12 January 2009 [LC Paper No. CB(2)638/08-09(01)] that members of the Bar were also ready for the implementation of CJR in April 2009. Members did not raise any queries on the proposed commencement of CJR.

Proposed amendments to subsidiary legislation

26. The Chairman advised members that since the enactment of the primary and subsidiary legislation on CJR in January and July 2008 respectively, the Judiciary had further identified a number of minor consequential legislative amendments which covered the Hong Kong Court of Final Appeal Fees (Amendment) Rules 2009, the District Court Civil Procedure (Fees) (Amendment) Rules 2009 and the Matrimonial Causes Fees (Amendment) Rules 2009, details of which were set out in the Annex to the Judiciary Administration's paper. It was the Judiciary Administration's plan to introduce the proposed amendments to subsidiary legislation into LegCo in February/March 2009. The Chairman further said that the two legal professional bodies had been consulted and were generally agreeable to the proposed amendments, which were technical in nature. Members did not raise any queries on the proposed legislative amendments.

Monitoring of the reformed civil justice system

27. The Chairman said that it was important to rigorously monitor the reformed civil justice system and gauge feedback from the relevant stakeholders after the implementation of CJR. She requested the Judiciary Administration to provide further information in writing on the work of the Committee established by CJ to monitor the implementation of CJR, including its terms of reference and scope of work. The Chairman further requested the Judiciary Administration to brief the Panel on the feedback received on the effectiveness of the reformed system at an appropriate juncture, say around six to 12 months after implementation of CJR. JA undertook to revert to the Panel on the Chairman's requests in due course after consultation with the Chief Judge of the High Court.

Jud Admin

VI. Statutory and non-statutory appointments of judges for extra-judiciary functions

[LC Paper Nos. CB(2)601/08-09(08) and CB(2)638/08-09(01)]

Briefing by the Judiciary Administration/Administration

28. JA introduced the paper prepared by the Judiciary Administration [LC Paper No. CB(2)601/08-09(08)] setting out the various types of statutory and non-statutory appointments of judges to offices outside the Judiciary (outside offices). Making reference to an extract from CJ's speech at the Ceremonial Opening of the Legal Year 2009 which was tabled at the meeting, JA briefed members on the Judiciary's position on appointment of judges to outside offices, as follows -

- (a) the Judiciary had not sought such work for itself. But where the Administration, reflecting community consensus, proposed legislation prescribing the appointment of a serving judge to a particular office, provided the Judiciary was satisfied that there was no objection in principle, it would be prepared to make a judge available upon enactment of the legislation by the Legislature. If a community consensus emerged that it was no longer necessary to call on a serving judge for such an appointment, the Judiciary would equally have no objection;
- (b) for all offices outside the Judiciary, whether or not judicial in nature, where the relevant statute provided for serving judges and other categories of persons to be eligible for appointment, such as retired judges and senior legal practitioners, the Judiciary's approach in recent years had been to request the Administration to look for a suitable person who was not a serving judge and to agree to make a serving judge available only where no other suitable person was available. This approach also applied to any non-statutory body, where the eligible persons were not legally prescribed;

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- (c) Regarding (b) above, the Judiciary however appreciated that in certain situations, the Administration might encounter difficulties in identifying suitable persons who are not judges for certain appointments. In respect of retired judge, it would depend on many factors including whether the retired judge was residing in Hong Kong, whether he possessed the relevant experience including whether he possessed bilingual ability, and whether he was willing to take up the appointment. In cases where the Administration could not identify other suitable persons, the Judiciary was prepared to make a judge available for such an appointment; and
- (d) where an outside office taken up by a serving judge involved substantial workload, the Judiciary was usually provided with extra resources to deal with the additional work in the form of extra judicial posts or resources for employing deputy judges. If the Administration was subsequently able to identify a suitable person who was not a serving judge to take up the appointment, the Judiciary would be prepared to return the concerned resources to the Administration, and the Administration might deploy suitable resources to remunerate those other persons who would take up the offices.

(Post-meeting note: The extract from CJ's speech was issued vide LC Paper No. CB(2)673/08-09 (02) on 14 January 2009.)

29. D of Admin said that the general principle adopted by the Administration for appointments to statutory or non-statutory bodies was to look for the most suitable person having regard to the needs and requirements of the statutory or non-statutory bodies concerned. In response to the Chairman's enquiry on why some public offices were statutorily required to be filled by serving or retired judges, D of Admin said that such requirement was prescribed into the relevant legislation only after thorough consideration during the scrutiny of the relevant bills. In selecting appointees to fill such posts, the Administration's approach was to look for the most suitable person. A retired judge would be appointed where it was appropriate to do so, an example being the appointment of a retired judge as Chairman of the Municipal Services Appeals Board.

30. Solicitor General said that for appointments which were statutorily required to be filled by judges, it was for the relevant policy bureaux to review whether, as a matter of policy, it was a desirable arrangement. As for those outside offices where the relevant statute provided for serving judges as one of the categories of persons eligible for appointment, the availability of other suitable persons would be a relevant consideration in selecting the appointees. Unlike the case of serving judges where there was a pool of readily identifiable candidates, retired judges were not necessarily available for selection, which was the reason why in some cases, serving judges had to be appointed.

Discussions

31. The Chairman drew members' attention to Rule 41(8) of the Rules of Procedures which provided that the conduct of Judges or other persons performing judicial functions should not be raised during the discussion.

Impact of outside duties on judicial work

32. Mr James TO said that following the recent incident involving a judge's conflicting rulings of a case, concern was raised about the impact of outside duties on the judicial work of judges. Expressing a similar concern, the Deputy Chairman enquired whether there was any monitoring mechanism to ensure that judges' judicial work, such as timeliness in delivering written judgments, would not suffer because of their outside offices.

33. JA assured members that as pointed out by CJ in his speech at the Ceremonial Opening of the Legal Year 2009, where a judge was asked to undertake work outside the Judiciary, the Judiciary was usually provided with extra resources to deal with the additional work in the form of extra judicial posts or resources for employing deputy judges. Furthermore, the judicial work of the judge concerned would be appropriately reduced to enable him to cope with both kinds of work. She further said that each Court Leader had a full picture of the workload of all the judges in his court who had taken up outside offices and suitable adjustments would be made if deemed necessary. There was also a mechanism for monitoring the timeliness of judges in delivering written judgments. She said that judges were discharging their duty of adjudicating cases in accordance with high professional standard.

Review on the policy and criteria for appointing judges to outside offices

34. Mr Ronny TONG considered it unnecessary for the Panel to discuss the extra-judiciary appointments which were statutorily required to be filled by judges, as the Administration should have explained the rationale for such a requirement to LegCo during the scrutiny of the relevant bills, the enactment of which required the approval of LegCo. Rather, concern should be focused on the non-statutory appointments of judges to public offices. He sought information on the criteria for appointing judges to public offices in non-statutory bodies, the list of non-statutory appointments currently held by serving judges and the resources involved.

35. D of Admin responded that the non-statutory extra-judiciary appointments currently held by serving judges included the various appointments to the Law Reform Commission, the chairmanship of the Advisory Committee on Post-office Employment for Former Chief Executives (CEs) and Politically Appointed Officials, and the chairmanship of the Advisory Committee on Post-service Employment of Civil Servants, details of which were set out in Annexes C and D to the Judiciary Administration's paper. In respect of the latter two Committees, their principal function was to give advice to the Administration on applications from former CEs, politically appointed officials or senior government officials for taking up post-service employment. In view of public concern about such applications, serving judges were

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appointed to chair the Committees to enhance public confidence in their independence and impartiality. On the criteria for selecting candidates for non-statutory outside offices, D of Admin said that CE would select the most suitable person having regard to the functions of the relevant public bodies and the expertise required of the posts. Where it was considered necessary to appoint a judge to a particular office, CJ would be consulted before the appointment was made by CE. At the request of Mr Ronny TONG, D of Admin agreed to provide information on the amount of extra resources provided by the Administration to the Judiciary where a serving judge had been asked to undertake work outside the Judiciary.

D of Admin

36. Mr James TO concurred with Mr Ronny TONG that careful consideration should be given to the need to appoint serving judges to non-statutory outside offices, in particular those which were non-judicial in nature. He requested the Administration to review each of the non-statutory appointments currently held by serving judges and revert back to the Panel on whether as a matter of policy such appointments must be taken up by serving judges. In his view, it was not necessary to appoint serving judges to chair the Advisory Committee on Post-office Employment for Former CEs and Politically Appointed Officials and the Advisory Committee on Post-service Employment of Civil Servants. Retired judges or persons of high public standing could be appointed instead. The Deputy Chairman echoed a similar view.

D of Admin

37. Dr Priscilla LEUNG said that it was not uncommon for public bodies such as universities to appoint a serving judge to head an internal structural review or inquiry. In her view, serving judges should refrain from taking up extra-judiciary functions which were administrative or political in nature, so as to avoid putting the individual judge or the Judiciary as a whole in any actual or potential embarrassment or position of conflict. She called for a comprehensive review on the policy of appointing judges to outside offices and suggested that a minimalist approach be adopted. Where it was indeed necessary to appoint judges to certain public offices, the Administration should try as far as possible to appoint retired rather than serving judges.

38. Ms Audrey EU said that the problem with appointing serving judges to outside offices was that extra-judiciary duties would, to a greater or lesser extent, take time away from their judicial duties, which should be their primary work. In addition, such appointments necessitated the allocation of extra resources to the Judiciary, which might not necessarily be the most optimal use of public resources. She shared the view of the Chairman of the Bar Association that no serving judges should be asked to perform any extra-judiciary function which was or might be perceived as political in nature. However, she considered it inappropriate to rule out completely the appointment of serving judges to outside offices because in certain cases it might be in the public interest to do so. She urged the Administration to conduct a review to establish clear policies and criteria for appointing serving judges to statutory as well as non-statutory extra-judiciary offices. In respect of appointments where the relevant statute provided for serving judges and other categories of persons (such as retired judges and senior legal practitioners) to be eligible for appointment, clear criteria should be drawn up as to when serving judges would be appointed.

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39. In response, D of Admin reiterated that judges would only be appointed to extra-judiciary functions where it was considered necessary and appropriate to do so. Where both serving and retired judges were eligible for appointment, consideration would be given to appointing retired judges if suitable candidates could be identified. For statutory bodies to which serving judges are appointed as required by relevant Ordinances, any proposal to change these statutory provisions should be carefully examined and fully justified as these requirements had been incorporated into relevant Ordinances after thorough consideration during the scrutiny of the bills. She undertook to convey Dr LEUNG and Ms EU's views to the relevant policy bureaux for consideration. Solicitor General pointed out that there had been cases in the past where serving judges were no longer appointed when other suitable candidates were available. Apart from the Administrative Appeals Board and the Air Transport Licensing Authority mentioned in CJ's speech, the Town Planning Appeals Board was another example where a serving judge was no longer appointed after other suitable person had been identified.

40. The Deputy Chairman shared the view that appointment of judges to outside offices which were not judicial in nature should not be ruled out entirely, albeit such appointments should be guided by clear principles and criteria, such as those put forth by the Chairman of the Bar Association in his letter to the Panel [LC Paper No. CB(2)638/08-09(01)]. Referring to Annex B to the Judiciary Administration's paper, the Deputy Chairman wondered whether it would be more appropriate to appoint persons from the social service sector, rather than judges, to the two Review Boards concerning with persons serving prison sentences shown in the Annex. D of Admin explained that the respective functions of the Long-term Prison Sentences Review Board and the Release under Supervision Board were to conduct sentence reviews of prisoners and consider applications for early release from eligible prisoners, and to make recommendations to CE on these matters. As the functions of these two Review Boards were related to judicial work, it was stipulated in the relevant Ordinances that the chairmen of the two Review Boards should be filled by serving or former judges. She would forward the Deputy Chairman's views to the relevant policy bureau for consideration.

41. Mr Paul TSE said that for public offices where the work was non-judicial in nature, the disadvantages of appointing serving judges to the offices would far outweigh the advantages. Not only did such outside offices impose additional work on the judges concerned, they might also give rise to the public misconception that the decisions made by judges in those public offices had judicial sanctions. The views expressed by judges while serving such posts might also influence other judges in deciding cases on the relevant subject matter. He held the view that some non-judicial posts, such as the chairmanship of the Electoral Affairs Commission (EAC), should not be taken up by judges at all. Having regard to the above considerations, Mr TSE agreed that it was opportune for the Administration to undertake a review on appointment of judges to outside offices. Aside from setting out clear criteria for non-statutory appointments of judges to outside offices, the Administration should also review the need for amending the relevant legislation

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which provided for the appointment of judges to outside offices which were non-judicial in nature, such as the chairmanship of EAC.

42. D of Admin responded that the Administration attached great importance to judicial independence and would ensure that the appointment of judges to extra-judiciary functions would not in any way impair that fundamental principle. She added that with a growing pool of retired judges in Hong Kong, there might be more room for the Administration to appoint retired judges in lieu of serving judges to public offices. In respect of the chairmanship of EAC, she said that the work of EAC was to ensure that elections were conducted in an honest, fair and open manner. With a view to enhancing public confidence in the independence and impartiality of EAC, it was prescribed in the relevant legislation that it was to be chaired by a serving judge.

43. Mr LAU Kong-wah considered it inappropriate to introduce drastic changes to the current system of appointment of judges to extra-judiciary functions merely on account of an isolated incident. In particular, he cautioned against making amendments to the relevant statutory provisions lightly, as they had been thoroughly deliberated by Members during the scrutiny of the bills concerned. He further said that it was understandable why judges were appointed to chair EAC and the two Advisory Committees on post-service employment of former CEs and senior civil servants. While persons of high public standing could be appointed, they were bound, in one way or another, to be connected with certain sectors or candidates, and as such were not perceived to be as independent and impartial as judges. He also considered it undesirable to proscribe the appointment of judges to certain public offices as it would reduce the flexibility in appointing the most suitable candidates to the posts.

44. Noting from CJ's speech that for offices outside the judiciary where the relevant statute provided for serving judges and other categories of persons to be eligible for appointment, the Judiciary's approach in recent years had been to request the Administration to look for a suitable person who was not a serving judge and to agree to make a serving judge available only where no other suitable candidate was available, Mr LAU Kong-wah asked whether this was an established policy in appointing judges to extra-judiciary functions. JA responded that where CJ's views were sought on such appointments, he would request the Administration to try to appoint other eligible persons as far as possible and would agree to make a serving judge available only where no other suitable candidate was available. In response to the Chairman, D of Admin said that CE would take into account CJ's views when making such appointments. As mentioned earlier at the meeting, there were past cases where serving judges were no longer appointed to certain statutory or non-statutory bodies when other suitable persons had been identified.

Conclusion

45. The Chairman concluded that members generally agreed that there was a need to review the policy and criteria for the appointment of judges to extra-judiciary functions with a view to safeguarding the independence of the Judiciary. In conducting the review, the Administration should have regard to the views given by CJ in his speech at the Ceremonial Opening of the Legal Year 2009 as well as those given by the Chairman of the Bar Association in his letter to the Panel. Members' concern had focused mainly on those extra-judiciary appointments which were not related to judicial work, i.e. those set out in Annex D to the Judiciary Administration's paper. Members considered it particularly important that no judges should be asked to perform any extra-judiciary function which was or perceived to be political in nature. The Administration should bear in mind that these appointments might become inappropriate when time changed. The Chairman considered that, apart from drawing up clear policy and criteria for appointing serving judges to extra-judiciary functions, the Administration should also review whether it was appropriate to have one judge taking up several outside offices. The Chairman requested the Administration to take account of members' views and to revert to the Panel on its plan for conducting the review.

D of Admin

VII. Any other business

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

Council Business Division 2
Legislative Council Secretariat
11 March 2009