

立法會
Legislative Council

Ref : CB2/PL/AJLS

LC Paper No. CB(2)2188/09-10
(These minutes have been seen
by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 28 June 2010, 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 Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon IP Wai-ming, MH
Hon LEUNG Kwok-hung

Member attending : Hon LI Fung-ying, BBS, JP

Members absent : Dr Hon Philip WONG Yu-hong, GBS
Hon Miriam LAU Kin-yea, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Paul TSE Wai-chun

Public Officers attending : Item III
The Administration
Department of Justice
Mr Ian Wingfield
Solicitor General

Item IV

Judiciary Administration

Mr NG Sek-hon
Deputy Judiciary Administrator (Operations)

Item V

The Administration

Department of Justice

Mr Ian Wingfield
Solicitor General

Mr Ian McWalters, SC
Director of Public Prosecutions

Mr David LEUNG
Senior Assistant Director of Public Prosecutions

**Attendance by
invitation** :

Item III

Hong Kong Bar Association

Mr P Y LO
Council Member

Item V

Hong Kong Bar Association

Mr Michael Blanchflower, SC
Council Member

Mr P Y LO
Council Member

The Law Society of Hong Kong

Mr Stephen HUNG
Council member and Chairman of the Criminal Law
and Procedure Committee

Mr Kenneth NG
Member of the Criminal Law and Procedure Committee

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

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

Ms Elyssa WONG }
Deputy Head }
Research and Library Services Division }
} For item V only
Dr Yuki HUEN }
Research Officer 8 }

Ms Amy YU
Senior Council Secretary (2)3

Ms Wendy LO
Council Secretary (2)3

Mrs Fanny TSANG
Legislative Assistant (2)3

Action

I. Confirmation of minutes of meeting
[LC Paper No. CB(2)1887/09-10]

The minutes of the meeting held on 26 April 2010 were confirmed.

II. Information papers issued since last meeting

2. Members noted that the following papers had been issued since the last meeting -

(a) Administration's paper on "Provision of free legal services" [LC Paper No. CB(2)1628/09-10(01)];

(b) submission dated 26 May 2010 from the Society for Community Organization to the Law Reform Commission on "Consultation Paper on Double Jeopardy" and copied to the Panel [LC Paper No. CB(2)1658/09-10(01)];

Action

- (c) response from the Department of Justice ("DoJ") to the submission from the Hong Kong Human Rights Monitor dated April 2010 [LC Paper No. CB(2)1681/09-10(01)]
- (d) Law Reform Commission's Report on "Criteria for service as jurors"; and
- (e) Executive Summary of the Law Reform Commission's Report on "Criteria for service as jurors".

3. Regarding the item referred to in paragraph 2(d) above, members noted from the Solicitor General ("SG") that it was the Administration's intention to take forward the recommendations in the report.

III. Law Reform Commission Report on Conditional Fees [LC Paper Nos. CB(2)1889/09-10(01) to (03)]

Briefing by the Administration

4. SG briefed members on the Administration's paper [LC Paper No. CB(2)1889/09-10(01)] setting out its conclusions on the recommendation made in the Law Reform Commission ("LRC") Report on Conditional Fees published in July 2007 for the establishment of a privately-run Conditional Legal Aid Fund ("CLAF") to finance applications for the use of conditional fees. SG said that both the Hong Kong Bar Association ("Bar Association") and the Law Society of Hong Kong ("Law Society") had expressed opposition to the setting up of CLAF in response to the Consultation Paper published by the LRC on Conditional Fees in 2005. The two legal professional bodies had also recently confirmed that their position on CLAF remained unchanged. SG further pointed out that there was great concern about the operation of conditional fee arrangements in England and Wales. In his Final Report on the Review of Civil Litigation Costs in England and Wales commissioned by the United Kingdom Ministry of Justice, published in December 2009, Lord Justice Jackson had examined the possibility of the establishment of a similar conditional legal aid fund there and had indicated reservation about the potential of such a fund to make a significant contribution to access to justice. Since an independently-run CLAF could only operate with the support of the legal profession and in view of the reservation expressed by the two legal professional bodies on CLAF, the Administration did not propose to take forward the recommendation of the LRC Report that a CLAF be established.

5. Members noted that the Administration's response to LRC's recommendation of expanding the Supplementary Legal Aid Scheme ("SLAS") was covered under its proposals for the current five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants ("five-yearly review"), which was discussed at the Panel meetings on 29 March and 24 May 2010.

Action

6. Members also noted the background brief prepared by the Legislative Council ("LegCo") Secretariat on the subject under discussion [LC Paper No. CB(2)1889/09-10(02)].

Views of deputations

Bar Association

7. Mr PY LO said that the Bar Association had expressed objection to the establishment of CLAF in 2006 when such a recommendation was put forth by LRC's Subcommittee on Conditional Fees for public consultation. The Bar Association considered that instead of setting up CLAF, the Administration should expand the scope of SLAS to widen access to justice, in particular for the middle class. In response to DoJ's request, the Bar Association had recently discussed the issue again and had maintained its view that it did not support the establishment of CLAF. Mr LO added that in its Consultation Paper on Class Actions published in November 2009, LRC's Class Actions Sub-committee had also expressed the view that there was serious drawback with CLAF as a source of funding for class action proceedings in Hong Kong.

Discussions

8. Referring to Annex A to the Administration's paper [LC Paper No. CB(2)1889/09-10(01)], the Chairman said that LRC's Report on Conditional Fees had made two major recommendations for widening access to justice, namely expansion of SLAS and setting up of CLAF. In respect of the latter, there appeared to be a general consensus among the two legal professional bodies and the Administration that it should not be taken forward. In the absence of a viable funding mechanism, conditional fee arrangements would not be feasible in Hong Kong. Since the proposal for expanding the scope of cases covered under SLAS had also been rejected by the Administration in its recommendations arising from the recently completed five-yearly review, she sought members' views on the way forward for enhancing access to justice.

9. The Deputy Chairman opined that the legal profession in Hong Kong was too conservative in their views on conditional fee arrangements. In his view, the concern expressed by some legal practitioners about conflict of interest between lawyers and clients under conditional fee arrangements could be addressed by means of a regulatory mechanism. He was concerned that owing to the many constraints and limited alternatives under the existing legal system, many people were denied access to justice due to lack of means. He believed that conditional fee arrangements had an important role to play in enhancing access to justice, and would help satisfy the unmet need for legal services as reflected in the large number of unrepresented litigants appearing before courts in Hong Kong. He wondered whether it was viable to provide conditional fee arrangements through community legal centres operated by non-governmental organizations.

Action

10. The Chairman said that unlike the position in the United States where the losing party did not have to pay the legal costs of the winning party, in Hong Kong the general rule was that costs should follow the event, meaning that the unsuccessful litigant would generally be required to pay the legal costs of the successful party. Hence, the feasibility of a conditional fee regime in Hong Kong depended on the availability of a funding mechanism to cover the opponent's legal costs if the legal action was unsuccessful, which was also the rationale behind the setting up of the proposed CLAF. The Chairman further said that in his speech to the Hong Kong Conference on Civil Justice Reform in April 2010, Lord Justice Jackson had mentioned about the proposal of capping the costs recoverable from opponents in cases where there was significant imbalance in bargaining power between the parties. Such a proposal could give litigants concerned certainty as to their exposure if unsuccessful.

11. SG said that Lord Justice Jackson had also recommended in his Final Report on the Review of Civil Litigation Costs that the costs shifting of the uplift fee and after-the-event insurance premium under conditional fee arrangements should not apply i.e. the additional legal costs incurred under conditional fee arrangement should cease to be recoverable from unsuccessful opponents.

12. Mr PY LO reiterated the Bar Association's view that expansion of SLAS was the most practicable means of enhancing the middle class' access to justice. He added that the Bar Association had a scheme in place to provide free legal advice and representation to needy litigants. On the Deputy Chairman's suggestion of providing conditional fee arrangements through community legal centres, Mr LO cautioned that persons giving legal advice in these centres should be qualified to practise either as a solicitor or barrister and possess a valid practising certificate; otherwise the operation of these centres might have breached the law.

13. Dr Priscilla LEUNG expressed strong disappointment with the lack of progress in enhancing access to justice, notwithstanding the Panel's long-standing call for improving the legal aid system. She pointed out that other than the proposal of raising the financial eligibility limits of the two legal aid schemes arising from the recently completely five-yearly review, the Administration had not made any substantial improvements to the legal aid system over the years to enhance access to justice. She considered this unacceptable and urged that reconsideration be given to the introduction of conditional fee arrangements in Hong Kong.

14. Mr TAM Yiu-chung said that when LRC's Consultation Paper on Conditional Fees was released for public consultation in 2005, the legal team of the Democratic Alliance for the Betterment and Progress of Hong Kong had expressed reservation about the introduction of conditional fee arrangements and considered it necessary to further examine the far-reaching implications of such arrangements. Nevertheless, he agreed to the need to enhance the middle class' access to justice, which was the main objective behind LRC's recommendation for introducing conditional fees arrangements in the Consultation Paper. In his view, the Administration should consider injecting additional money into the SLAS Fund with a view to enhancing the availability of legal aid services to the middle class under SLAS.

Action

15. Mr IP Wai-ming said that the Hong Kong Federation of Trade Unions ("HKFTU") had also expressed doubts and reservation about the introduction of conditional fee arrangements in Hong Kong. He pointed out that there were many cases where employees who had patronized the service of recovery agents in relation to personal injury claims had suffered unfair treatment by the recovery agents. HKFTU was concerned that the same problem might occur under conditional fee arrangements. He shared the view that there was a need for making substantive progress in enhancing access to justice but considered that it should be done by way of improving the legal aid system, such as further raising the financial eligibility limits for the two legal aid schemes.

16. The Chairman expressed grave dissatisfaction that the legal aid regime had hardly made any progress to keep abreast of the needs of the society notwithstanding the repeated demands of the Panel over the past decade. She stressed that Members belonging to different political parties and groups and the two legal professional bodies were unanimous in support of expanding the scope of SLAS and allocating more resources to the scheme, while the Administration seemed to be the only party objecting to such proposals. She considered that the Panel should strongly request the Administration to consider expanding SLAS during the discussion on the five-yearly review at the forthcoming special Panel meeting on 21 July 2010.

17. SG said that there had been some expansion in the scope of SLAS over the years. When SLAS was introduced in 1984, it only covered claims arising from personal injuries or death. Its scope had subsequently been extended to include employees' compensation claims as well as medical, dental and legal professional negligence claims.

18. The Chairman further said that experience in the United Kingdom showed that quite a number of problems had arisen from the implementation of conditional fee arrangements, including escalation of litigation costs. She reiterated that owing to the general costs rule that costs should follow the event, many people would still be reluctant to take on litigation even if conditional fees arrangements were introduced in Hong Kong for fear that they could not afford to pay the legal costs of the opponent if they lost. In view of such difficulties with the implementation of conditional fee arrangements, she was of the view that members should focus on demanding the expansion of SLAS. She also suggested to explore in the context of enhancing access to justice the feasibility of capping the costs recoverable from opponents for litigations where there was significant imbalance in bargaining power between the parties, with a view to giving the litigants concerned certainty as to their exposure to litigation costs if unsuccessful. A notable example of this was cases where employees who had been granted an award by the Labour Tribunal had to face further litigation when their employers appealed against the award. To facilitate the Panel's discussion on related issues at the forthcoming meeting on 21 July 2010, members agreed to request the Administration to provide relevant information and its views on the suggestion raised by the Chairman.

Action

19. Dr Priscilla LEUNG suggested that the Administration should also explore whether there was room for saving the legal costs incurred in legal aid cases so that more people could be assisted under the limited legal aid funding. For instance, in engaging lawyers in legal aid cases, the Legal Aid Department ("LAD") should exercise more flexibility and review critically the number of lawyers required and the need to engage senior counsel with a view to saving legal costs. The Chairman, however, stressed that the number of lawyers to be engaged in legal aid cases should depend on the needs of individual cases. The Chairman also pointed out that following the passage of the legislation to grant higher rights of audience to solicitors, litigants would not necessarily have to engage both a solicitor and a barrister for proceedings in the higher courts. To facilitate the Panel's further consideration, members agreed to request the Administration and the Legal Aid Services Council ("LASC") to provide relevant information and their views on Dr Priscilla LEUNG's suggestion.

HAB
LASC

IV. Bailiff services

[LC Paper Nos. CB(2)1889/09-10(04) to (05)]

Briefing by the Administration

20. Deputy Judiciary Administrator (Operations) ("DJA") briefed members on the work of the Bailiff Office in the Judiciary Administration ("JA"), the workload and manpower situation of Bailiffs and Bailiff's Assistants ("BA") and the measures undertaken by the Bailiff Office to improve productivity and quality of services, as detailed in JA's paper [LC Paper No. CB(2)1889/09-10(04)].

21. Members also noted the background brief prepared by the LegCo Secretariat on the subject under discussion [LC Paper No. CB(2)1889/09-10(05)].

Discussions

Workload and manpower situation of Bailiffs and BAs

22. Ms LI Fung-ying expressed grave concern about the workload and manpower situation of Bailiffs and BAs. She said that according to JA's paper, the productivity of Bailiffs and BAs had been increasing over the past years and they were able to cope with the increasing workload despite the reduction in manpower. On the other hand, it was her understanding that some Bailiffs and BAs had written to JA and Members requesting additional manpower resources to cope with the increasing workload. Referring to the establishment and strength of the Bailiff Grade as set out in Appendix V to the background brief and paragraph 12 of JA's paper, Ms LI pointed out that even with the recent recruit of five contract BAs, there was still a significant gap between the strength (39 as at 15 June 2010) and the establishment (43) of BAs, and sought explanation for such discrepancy.

Action

23. DJA responded that JA had maintained close communication with the staff of the Bailiff Office through regular meetings. When the Judiciary Administrator met with Bailiffs and BAs a few months ago, issues concerning the workload and manpower situation of the Bailiff Office were discussed. It should be noted that there had been fluctuations in the workload of the Bailiff Office in recent years. To ensure prudent use of public money, recruitment exercises would be conducted if there were anticipated wastages and the additional workload could not be absorbed by the existing manpower available. He stressed that JA had kept a close watch on the manpower situation of the Bailiffs and BAs and additional staff would be recruited where necessary.

24. Ms LI Fung-ying reiterated her concern on the immense work pressure of the staff of the Bailiff Office and criticised that JA had not responded to the concerns of the staff on the increase in workload. Referring to the data on the service of summonses in paragraph 12 of JA's paper, Ms LI pointed out that while the number of summons services attempted by BAs had increased from 79 866 in 2007 to 88 335 in 2009, the manpower of BAs had reduced from 40 to 37. She stressed that the data pointed clearly to an increase, rather than any fluctuations, in the workload of the Bailiff Office.

25. DJA explained that experience had shown that the workload on service of summonses could fluctuate from time to time. While the output on service of summonses had increased over the past three years, it had shown a downward trend in the period 2002-2005. Moreover, the output in the first five months of 2010 had also decreased as compared with the same period last year. DJA further said that following the re-organization of the Bailiff Office in October 2006, the productivity of Bailiffs and BAs had been increasing in the past few years and the quality of services of the Bailiff Office was maintained at a reasonable level, despite the reduction in manpower. He stressed that staff of the Bailiff and BA ranks were closely involved in the implementation of the re-organization exercise which was well-received by them. He reiterated that JA would continue to keep in view the manpower requirements of the Bailiff Office and adopt appropriate measures to cope with additional workload.

26. Mr TAM Yiu-chung said that it was clear from the statistics in JA's paper that the workload in the Bailiff Office was increasing but there had not been any corresponding increase in manpower. He considered that there was a need to strengthen the manpower situation of the Bailiff Office to alleviate the work pressure on staff. The Chairman concurred with the view that there should be a review on the manpower situation of the Bailiff Office to cope with the increasing workload.

Appointment of non-civil service contract staff

27. Ms LI Fung-ying asked why all the five new BAs were employed on non-civil service contract rather than civil service terms. In her view, they should be engaged on permanent civil service terms having regard to the long term service needs and the

Action

professional knowledge required of their work. Ms LI further enquired whether it was JA's plan to convert gradually all civil service positions in the Bailiff Office to non-civil service contract positions. DJA assured members that JA did not have any plan to do so. He explained that as there had been fluctuations in the workload of the Bailiff Office from time to time, the immediate need for manpower was met by the appointment of non-civil service contract staff initially. He reiterated that JA had been monitoring closely the workload of the Bailiff Office and did not rule out the need to appoint BAs on permanent civil service terms in future should there be a consistent increase in the workload of the Bailiff Office.

28. The Chairman said that Bailiffs and BAs were court staff who were responsible for effecting the execution of court orders. She stressed that the proper execution of their duties, such as execution of Warrant of Distress, required specialized training and professional knowledge, and considered it inappropriate to employ contract staff to undertake such duties.

29. DJA explained that the newly recruited contract BAs were mainly responsible for serving summonses or legal documents. The execution of court orders and judgements would be undertaken by staff of the Bailiff rank the majority of whom were engaged under civil service terms of appointment. Currently, only two Bailiffs were engaged on contract terms. He added that the Bailiffs to be appointed in the recent recruitment exercise would also be employed under civil service terms of appointment.

30. On Mr LEUNG Kwok-hung's enquiry about JA's policy on employment of staff, DJA responded that JA had generally followed the established employment policy of the Government, i.e. civil servants would be recruited to fill the posts created to meet long term service needs, while non-civil service contract staff would be engaged to meet service needs which were short-term or subject to fluctuations. He reiterated that five contract BAs were recruited recently having regard to the fluctuating workload on services of summonses, and stressed that the recruitment of staff in the Bailiff Office would be conducted flexibly to meet the manpower needs of the Office.

Monitoring and assessment on performance of Bailiff services

31. Noting from paragraph 7 of the background brief that there was an external assessment mechanism on the work of Bailiffs, the Chairman enquired about the views and feedback of external parties on the performance of Bailiffs and BAs. Referring to paragraph 13(c) of JA's paper, DJA responded that as a fulfilment to the requirement of the quality management system based on ISO 9001, the Bailiff Office had conducted user satisfaction surveys on its execution and counter services in 2007 and 2009. Findings of the surveys indicated growing satisfaction among respondents on the execution services by the Bailiff Office. He assured members that the Bailiff Office would continue to strive to improve its services.

Action

32. The Deputy Chairman said that whether the quality of Bailiff services was maintained could be reflected in the waiting time for the execution of court orders and serving summonses. In response to the Deputy Chairman's request for updated information in that regard, DJA referred members to paragraph 13(a) of JA's paper and said that the average waiting time for the execution of a Writ of Fieri Facias was maintained at about seven days and that for execution of Warrant of Distress was less than six days in 2009. In addition, incoming summonses could be attempted to be served on average within six days of receipt. Responding to the Deputy Chairman's further enquiry on the waiting time for the second attempt in executing court orders and serving summonses, DJA replied that it would depend, inter alia, on when the prosecution was able to provide further information (such as the new address of the person being served with a summons) on the cases concerned to the Bailiff Office.

Conclusion

33. Concluding the discussion, the Chairman said that as JA's paper reflected mainly the position of the management, it would be helpful if members could collect views from Bailiffs and BAs on the workload and manpower situation of the Bailiff Office so that the Panel could consider the issues not only from the perspective of JA, but also from that of the staff side. The Panel could follow up the relevant issues where necessary.

V. Trial in the District Court

[LC Paper Nos. CB(2)1889/09-10(06) to (08), CB(2)1907/09-10(01) and IN19/09-10]

Briefing by the Administration

34. Director of Public Prosecutions ("DPP") briefed members on the Administration's paper [LC Paper No. CB(2)1889/09-10(06) addressing three inter-related issues, namely conviction rates, the prosecution's right to elect venue for trial and mode of trial in the District Court ("DC"). DPP said that the conviction rates in DoJ's Yearly Review of the Prosecutions Division for 2008, the subject of the recent controversy, was defendant based and in relation to any substantive or alternative offence on which the defendant was convicted. DPP stressed that there were different basis for calculating conviction rates and it would be imprudent to reach any conclusions based solely on conviction statistics without knowing their full details and the basis of their calculation. DoJ was of the view that there was nothing in the conviction statistics that could be a cause for concern.

35. DPP further said that the right of the prosecution to determine the venue for trial was considered in recent judicial review proceedings. In the judgment of the Appeal Committee of the Court of Final Appeal, it was pointed out that there was no right to trial by jury in Hong Kong and the function of electing venue for trial was one which should properly be vested in the prosecution. The Appeal Committee had also

Action

rejected the suggestion that a trial in DC was, by virtue of being a non-jury trial, in any way less fair than a trial in the Court of First Instance ("CFI"). DPP stressed that the benefits of a jury trial were more perceived than proven. Having taken into account all the circumstances including resource implications, the Administration had no current plan to introduce the jury system to DC.

36. Members noted the background brief on "Trial in DC" [LC Paper No. CB(2)1889/09-10(07)] prepared by the LegCo Secretariat and the information note on "Conviction rates in selected places" [IN19/09-10] prepared by the Research and Library Services Division of the LegCo Secretariat.

Views of the legal profession

The Bar Association

37. Mr Michael Blanchflower presented the views of the Bar Association as detailed in its submission [LC Paper No. CB(2)1889/09-10(08)]. In gist, the Bar Association recommended that LegCo should consider how jury trials in CFI could be more widely used and provided for in legislation, and study the introduction of jury trials in DC. Mr Blanchflower highlighted the following points -

- (a) while there was no constitutional right to trial by jury in Hong Kong, the right to a jury trial was deeply embedded in the common law. The continued existence of the common law in Hong Kong was guaranteed under Article 8 of the Basic Law;
- (b) the benefits of jury trial had been well expounded by eminent jurists in common law jurisdictions;
- (c) it should be borne in mind that it was the defendant whose liberty was at stake and who had the right to a fair trial. If the defendant perceived that he would have a fair trial before a jury, he should be entitled to have a jury trial;
- (d) in Chapter 14 of DoJ's "Statement of Prosecution Policy" which stated the prosecution's policy on the choice of trial venue, there was no mentioning of the importance of jury trial or the types of cases suited to jury trial. This was in stark contrast with the prosecution's guidelines for jury trial in the State of New South Wales, Australia ("NSW"), which emphasized the importance of jury trials and the circumstances where a jury trial was more suitable. The NSW guidelines also stated that trials in which judgment was required on issues involving community values (such as reasonableness, provocation, dishonesty, indecency), or in which there were substantial issues of credit should ordinarily be heard by a jury; and

Action

- (e) the Bar Association took exception to the Administration's view, as stated in paragraph 29 of the Administration's paper, that jury service might adversely affect jurors' productivity and efficiency. Given the importance of jury trials, costs could not be a primary consideration.

Law Society

38. Mr Stephen HUNG said that the Law Society supported in principle the Bar Association's views on jury trials. Referring to page 7 of the Law Society's submission [LC Paper No. CB(2)1907/09-10(01)], Mr HUNG further said that presently different bodies used different basis to calculate conviction rates and the Law Society was concerned about the lack of consistent system of compiling conviction statistics in Hong Kong. The Law Society also noted that the Judiciary had not kept any conviction figures at all and considered that the Judiciary should have no difficulty in collating such data. The Law Society recommended that the relevant bodies, including DoJ, the Judiciary, the two legal professional bodies, and where appropriate, law enforcement agencies such as the Police and the Independent Commission Against Corruption, should work out a uniform system of compiling conviction statistics to give a real picture of the Hong Kong position and for future analysis purpose. Views of academics could also be sought as appropriate. The Chairman suggested writing to the Judiciary to seek its views on whether it would be viable for the Judiciary to collect data on conviction rates. Members agreed.

Clerk

Discussion

39. While recognizing that there were different basis for calculating conviction rates, the Chairman considered that the conviction rates in Hong Kong were high as compared to other common law jurisdictions. She pointed out that the overall conviction rates (including guilty plea) of over 90% for DC and CFI meant that an arrested person was, statistically, almost certain to be convicted.

40. The Deputy Chairman, however, did not consider that the conviction rates in Hong Kong, in particular the conviction rates after trial, was a particular cause for concern. The Deputy Chairman further said that he did not agree with the Administration's view that the benefits of jury trials were more perceived than real. He stressed the importance of perception of fairness, particularly on the part of the defendant, in the administration of justice. In his view, the Administration should consider giving the defendant the right to elect a jury trial in line with the practice in many common law jurisdictions.

41. The Chairman and Mr LEUNG Kwok-hung shared the view that in the interest of fair trial, a person charged with a criminal offence should have the right to elect a jury trial. Referring to paragraphs 28 and 29 of the Administration's paper on the resource implications involved in introducing jury trials in DC, Mr LEUNG opined that the issue of overriding importance was to ensure the fairness of a defendant's trial and resources implications should only be secondary considerations.

Action

42. The Chairman asked whether the Administration had studied the possibility of allowing a defendant facing trial in DC to elect for a jury trial in respect of certain types of proceedings such as those involving dishonesty. DPP replied in the negative. He further said that in exercising its power to elect the venue for trial, the prosecution was actually making two decisions. Should the prosecution decide to conduct the trial in DC, it did not only mean that the prosecution considered it an inappropriate case for the High Court, but also that it was an inappropriate case for the Magistrates' Court. Hence, the issue of whether a defendant should be given the right to elect a jury trial involved not only trials in DC, but also those in the Magistrates' Court.

43. The Chairman said that cases tried in the Magistrates' Court involved relatively lower level of punishment. Members' main concern was cases where the defendants faced a potentially stiff sentence. While the Administration might well say that a person could have a fair trial before a judge sitting alone, the question was whether the accused person so perceived.

44. DPP said that offences involving dishonesty were often the type of cases which were unsuited to a jury trial, as such cases tended to go on for a long time, thus imposing enormous hardship on the jurors concerned. It was his understanding that other jurisdictions were considering whether there was an alternative to jury trial for such type of cases.

45. Concluding the discussion, the Chairman requested DoJ to discuss with the two legal professional bodies on the viability of giving defendants the right to elect a jury trial and report to the Panel on the progress of the discussion in due course.

DoJ

VI. Any other business

Joint Subcommittee on Amendments to Land Titles Ordinance

46. The Chairman advised that the Joint Subcommittee which was appointed on 20 January 2009 had reviewed the progress of its work and considered continuation of its work necessary. Members raised no objection to the Joint Subcommittee continuing its work in the next legislative session.

Proposed construction of the West Kowloon Law Courts Building

47. Dr Priscilla LEUNG said that she had just written to the Chairman requesting the Panel to further discuss the selected site for the construction of the West Kowloon Law Courts Building. The Chairman said that upon her receipt of the letter, she would arrange to circulate it to members and invite their views on Dr LEUNG's request.

Action

48. There being no other business, the meeting ended at 6:34 pm.

Council Business Division 2
Legislative Council Secretariat
19 August 2010