

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion

(position as at 24 March 2010)

**Proposed
timing for
discussion**

1. Applicability of Hong Kong Special Administrative Region (HKSAR) laws to offices set up by the Central People's Government in HKSAR

The item was discussed at a number of meetings of the Panel since 1998. When the item was last discussed by the Panel on 28 April 2008, the Administration advised the Panel on the following -

To be advised by
Constitutional and
Mainland Affairs
Bureau

- (a) 15 Ordinances which expressly bind the Government but are silent on their applicability to the Central People's Government (CPG) offices - amendments would be introduced to four Ordinances in the 2008-2009 legislative session. The Administration would discuss further with CPG on the remaining 11 Ordinances;
- (b) Personal Data Privacy Ordinance (PDPO) - the Administration and CPG was studying whether and if so how PDPO should apply to CPG offices set up in Hong Kong; and
- (c) 35 Ordinances which contain express references to the "Crown" - six of these Ordinances required no further action (viz. three had already been adapted, and three had been repealed). The Administration would continue to examine how the remaining 29 Ordinances should be adapted.

On behalf of the Panel, the Chairman wrote a letter to the Secretary for Justice (SJ) in May 2008 conveying members' discontent with the little work progress achieved by the Administration after a lapse of 10 years and concerns about the applicability of PDPO to CPG offices in Hong Kong. SJ advised in July 2008 that more time was needed by the Administration.

In respect of (a) above, the Adaptation of Laws Ordinance was passed by the Legislative Council (LegCo) in April 2009 and commenced operation on 8 May 2009. The Ordinance has extended the applicability of four Ordinances, namely the Legislative Council Commission Ordinance (Cap. 443), Plant Varieties Protection Ordinance (Cap. 490), Patents Ordinance (Cap. 514) and Registered Designs Ordinance (Cap. 522), to the three offices set up by CPG in HKSAR.

In addition, legislative amendments have been proposed in respect of the Arbitration Ordinance (Cap. 341). The Arbitration Bill, introduced into LegCo on 8 July 2009, provides that, aside from the being applicable to the Government, it will also apply to the offices set up by CPG in HKSAR.

2. Five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants

The Panel received views from organizations on the approach of the current five-yearly review of the criteria for assessing financial eligibility of legal aid applicants in March 2007 and May 2008. At the meeting on 20 October 2008, the Administration advised that it was formulating concrete proposals on the possible options, with a view to consulting the Legal Aid Services Council (LASC) and the Panel in the first quarter of 2009.

March 2010
Home Affairs
Bureau (HAB)

At the meeting on 30 March 2009, the Administration advised that it needed more time to consider the relevant financial and other implications, and undertook to revert to the Panel on its recommendations on the five-yearly review as soon as practicable. The Administration also undertook to provide detailed responses to the issues raised by members at the meeting when it reverted to the Panel on the subject.

The following issues were referred by the Subcommittee on Proposed Resolution under Section 7(a) of the Legal Aid Ordinance (Cap. 91) to the Panel for follow-up in the context of the current five-yearly review -

- (a) review of the mechanism for conducting biennial reviews of financial eligibility limits of legal aid applicants, in particular the viable means for collecting information on private litigation costs; and
- (b) review of the policy concerning provision of publicly-funded legal aid services to employees in respect of employees' compensation claims and employer insolvency cases.

The Subcommittee had also suggested that the views of the Panel on Manpower should be considered in the review in paragraph (b) above.

The Administration will report to the Panel on its recommendations for the current five-yearly review at the meeting on 29 March 2010.

3. Criminal legal aid fees system

At the request of the two legal professions made in 2003, the Administration reviewed the criminal legal aid fees system and

To be advised by
HAB

discussed the relevant issues with the Panel at six meetings held between December 2005 and June 2009. The Panel noted that while the Administration had reached broad consensus with the legal professional bodies on the proposed structure of the criminal legal aid fees system, the Administration was yet to resolve the divergence of views over the fee rates with the Law Society. The Panel also noted the Bar Association's suggestion that in view of the lack of progress of the discussion between the two parties, implementation of the revised criminal legal aid fees system for barristers should be de-linked from that for solicitors should the Administration and the Law Society fail to reach agreement on the fee rates.

When the Panel received a report from the Administration on the latest progress of its discussion with the Law Society on fee rates for solicitors in June 2009, members noted that the Administration had put forth a revised proposal on fee rates for the Law Society's consideration, but the fundamental difference between the two parties on the basis for determining fee rates had yet to be resolved. Members noted the Law Society's view that the revised rates did not properly reflect the professional responsibilities of solicitors in criminal legal aid work and were still far below the civil party-to-party taxation rates for remunerating civil legal aid cases. The Panel urged the two parties to iron out their differences as far as practicable and requested the Administration to report to the Panel when they were able to come to an agreement on the matter.

In its letter to the President of the Law Society dated 11 February 2010 (LC Paper No. CB(2)973/09-10(01)), the Administration advised that it was making preparation for the legislative process to put in place the revised criminal legal aid fees structure and rates.

4. Professional Indemnity Scheme of the Law Society

In its report to the House Committee on 26 October 2001, the former Subcommittee on Solicitors (Professional Indemnity) (Amendment) Rules 2001 recommended that this Panel should follow up the progress of the independent review of the insurance arrangement under the Professional Indemnity Scheme (PIS) of the Law Society. Since then, the Panel has monitored the review of PIS and received progress reports from the Law Society.

To be decided
by the Panel
Department of
Justice (DoJ)/
Law Society

In November 2004, members of the Law Society voted for a Qualifying Insurers Scheme (QIS) to replace the existing scheme.

In May 2006, the Law Society informed the Panel that its members had voted by a large majority not to replace the existing PIS by a QIS at its Extraordinary General Meeting on 27 April 2006. The Law Society

had set up a Professional Indemnity Scheme Review Working Party to identify any deficiencies in the existing scheme, consider how they might be remedied, and make appropriate recommendations.

At the Panel meeting in February 2007, the Law Society gave a report on the progress of work of the Review Working Party. The Working Party would proceed to consider a number of outstanding issues and submit a report with recommendations to the Council of the Law Society in due course.

The Law Society's second and third reports on the progress of work of the Review Working Party were issued to the Panel on 25 April 2008 (LC Paper No. CB(2)1722/07-08(01)) and 20 October 2009 (LC Paper No. CB(2)148/09-10(01)) respectively. According to the third progress report, the reinsurance contract had been extended from 1 October 2009 for a period of four years, with an option to terminate after two years should PIS be replaced by an alternative form of indemnity arrangement.

The Law Society advised in October 2009 that it had commissioned actuaries and brokers respectively to review the formula for calculating the contributions payable under PIS and to compare the costs of insurance to law firms under a Master Policy Scheme and PIS, and that it would be better able to advise on an appropriate time for discussion of the review of PIS when these findings are available.

5. Free legal advice service

A Consultative Committee chaired by the Solicitor General was established to oversee the Consultancy Study on the Demand for and Supply of Legal and Related Services in Hong Kong (the Consultancy Study) which started on 29 July 2004.

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HAB

The Panel discussed the Reports of the Consultancy Study in May 2008 and requested the Administration to consider how to make use of the information in the Reports.

At the meeting on 22 October 2007, the Chairman proposed and the Panel agreed that it was opportune for the Administration to review the Free Legal Advice Scheme which was under the purview of HAB. As free legal advice services provided by legal profession were covered in the Reports, the Chairman considered it appropriate to discuss the subject in the broader context of the demand for and supply of legal and related services in Hong Kong.

At the meeting on 22 June 2009, the Panel received a progress report on the Administration's consideration of the Reports on the Consultancy Study. Members expressed strong dissatisfaction with the absence of concrete proposals from the Administration to address the gaps in

service availability and unmet legal needs identified in the Reports. Members were particularly dissatisfied that the Administration had not put forth any proposal for reviewing the effectiveness and adequacy of the existing Free Legal Advice Scheme, notwithstanding that the Reports had clearly pointed to an unmet demand for legal advice service in the community. At the Panel's request, the Administration undertook to work out proposals for improving the existing operation of and support to the free legal advice service and report to the Panel.

During the discussion on the research report on "Legal aid systems in selected places" at the meeting on 25 January 2010, the Administration undertook to report to the Panel on its views on the proposal for the provision of publicly-funded legal advice to detainees in police station under this discussion item at the meeting scheduled for 29 March 2010.

6. Independent statutory legal aid authority

In its written response to the Panel regarding the proposed transfer of the legal aid portfolio from the Administration Wing of the Chief Secretary for Administration's Office to HAB, LASC advised the Panel that it had recommended to CE the establishment of an independent statutory legal aid authority in September 1998. Although the recommendation was not accepted by the Administration, LASC considered it appropriate to seek a review of the issue.

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HAB

LASC completed its review in October 2009. LASC did not see a pressing need to disestablish the Legal Aid Department (LAD) and substitute it by an independent legal aid authority, in view of the very satisfactory service currently provided by LAD, the views of the LAD staff on the matter and the present financial position of the Government. The findings of the review are set out in LASC Chairman's letter to CE dated 16 October 2009, which was issued to members vide LC Paper No. CB(2)357/09-10 dated 24 November 2009.

The Panel discussed the findings of LASC's recent review at its meeting on 25 January 2010. To facilitate further discussion, members agreed to request LASC to provide a copy of its review report and further information on the review. Members also agreed to further discuss the subject with the Chairman of LASC at the meeting on 29 March 2010.

7. Proposed construction of the West Kowloon Law Courts Buildings

During a court visit by the Panel in the 2006-2007 session, members expressed the view that the design and the location of court buildings should reflect the importance and dignity of the courts and the independence of the Judiciary. The interior design of court buildings such as court/waiting rooms was also important.

April 2010
Judiciary
Administration
(JA)

JA advised in November 2008 that a comprehensive review of the Judiciary premises was embarked with a view to mapping out a long-term accommodation strategy for the next decade that would meet the operational needs of the Judiciary which would be completed by late 2009.

During its visit to the Judiciary in July 2009, the Panel received a briefing from JA on the accommodation strategy of the Judiciary. Members suggested that a specialized domestic violence court be established and the design of the Small Claims Tribunal and the Family Court be improved. JA has consulted the Panel on the construction of additional courtrooms and associated facilities in the High Court Building in December 2009 and will consult the Panel on the construction of the West Kowloon Law Courts Buildings in April 2010.

8. Report on Conditional Fees

The Report on Conditional Fees was published by the Law Reform Commission (LRC) in July 2007. At the meeting on 22 October 2007, the Panel agreed to discuss relevant issues at a future meeting.

HAB will address the issue concerning the Supplementary Legal Aid Scheme at the meeting on 29 March 2010 in the context of the review of criteria of assessing the financial eligibility of legal aid applicants.

DoJ will revert to the Panel on the remainder of the Law Reform Commission's Conditional Fees Report in June 2010.

9. Pre-trial interviewing of witnesses by prosecutors

It had come to the attention of the Panel that the Director of Public Prosecutions (DPP) had established a Working Group in 2007 to examine the feasibility of introducing a scheme of pre-trial witness interviews (PTWI) by prosecutors in Hong Kong, and accepted its

May 2010
DoJ

recommendation that before any decisions were taken, a nine-month monitoring exercise would be conducted to collect relevant statistics and information with effect from 1 April 2008. At the meeting in June 2008, the Panel discussed the existing policy and practice on PTWI, the objectives of the monitoring scheme, and the experience of, and the schemes adopted in, other major common law jurisdictions. According to the Administration, the Working Group would make recommendations in 2009 and all interested bodies would be consulted if it was decided that PTWI scheme should be taken forward. Members requested the Administration to report progress to the Panel in due course.

In April 2009, DoJ advised that it had launched a six-month consultation exercise to seek the views of the two legal professional bodies, the law enforcement agencies, LRC, the Judiciary and the victim groups on the proposed scheme of pre-trial witness interviews. DoJ will revert to the Panel on responses received in the consultation exercise.

10. Implementation of Civil Justice Reform (CJR)

The Panel has been monitoring the progress on preparation made by the Judiciary and the two legal professional bodies for the implementation of CJR. The Panel noted that the Chief Justice (CJ) had established 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 Panel requested JA to brief members on the effectiveness of the reformed system at an appropriate juncture after the implementation of CJR.

Third quarter of
2010
JA

11. Mode of trial

At the Panel meeting on 13 January 2009, members noted the concern expressed by the Chairman of the Bar Association, in his speech delivered at the Ceremonial Opening of the Legal Year 2009, 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. The concern was that the current practice of resting the choice of Court solely with the Prosecution would deny the defendant the right to a jury trial.

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DoJ

On 2 February 2009, in response to the Panel's request, DoJ provided information on the factors to which the prosecution would have regard in selecting the venue for trial [LC Paper No. CB(2)756/08-09(01)]. In its response, DoJ had also advised that although there were no plans to review the current practice, the question of whether any review was necessary or desirable would be examined in the light of the outcome of the judicial review proceedings concerning the decision of the prosecution to seek trials in the District Court rather than in the Court of

First Instance in two separate cases of conspiracy to defraud, which were to be heard before Hon Justice Wright in the Court of First Instance from 2 to 4 February 2009.

In his judgment delivered on 9 February 2009 (HCAL 42/2008 and HCAL 107/2008), Hon Justice Wright has pointed out that there does not exist in Hong Kong any absolute right to a jury trial nor any mechanism by which a person to be tried of an indictable offence may elect to be so tried. The decision as to whether an indictable offence be tried in the Court of First Instance by a judge and jury or in the District Court by a judge alone is the prerogative of SJ. The learned judge found the reasons furnished by SJ for his decision to transfer the proceedings to the District Court sufficient on the factual situation of each case. Consequently both applications were dismissed.

At the Panel meeting on 23 February 2009, members agreed to include the subject on the Panel's list of outstanding items for discussion.

In September 2009, DoJ advised that the issue had been considered by the Court of Appeal, which had upheld the decision of Hon Justice Wright in the Court of First Instance (CACV 151 of 2009).

12. Appointment of Temporary/Deputy Judges and Judicial Officers

In response to the Panel's request made at the meeting on 30 March 2009, JA had provided for members' reference an information paper on the engagement and deployment of temporary judicial resources [LC Paper No. CB(2)1375/08-09(01)]. At the meeting on 27 April 2009, members agreed to include the subject on the Panel's list of outstanding items for discussion.

June 2010
JA

13. Inclusion of the statutory Independent Police Complaints Council (IPCC) under the purview of The Ombudsman

During the discussion on the subject of "Review of jurisdiction of the Office of The Ombudsman" at the Panel meeting on 27 April 2009, members raised the issue of whether the statutory IPCC to be established on 1 June 2009 should be subject to The Ombudsman's jurisdiction. Members noted that the issue had been considered during the scrutiny of the IPCC Bill, and the Administration's view then was that the statutory IPCC should not be brought under The Ombudsman's ambit for the time being. Members agreed to bring up the issue for discussion after the statutory IPCC had been in operation for some time.

To be decided by
the Panel
Admin Wing

The Administration advised in September 2009 that it would continually monitor the situation and consider the issue when the statutory IPCC had been in operation for some time.

14. Arrangements of replacing Police Constable with security guards at Magistrates' Courts

On the basis of the outcome of a study conducted by the Administration in 2004 to identify opportunities for civilianization in the disciplined services departments with a view to enhancing efficiency and cost-effectiveness, a new arrangement of replacing part of the Police Constable establishment at Magistrates' Courts with security guards was implemented by phase in early 2009. The arrangement, worked out by the Security Bureau (SB) and the Police in consultation with JA, involves the replacement of 58 Police Constable crowd control posts with contracted security personnel at seven Magistrates' Courts. SB and JA advised in June 2009 that the two parties would continue to monitor the new arrangement to ensure its effectiveness in maintaining the same level of crowd control and security at the Magistrates' Courts. The Chairman proposed that the Panel should monitor the operation of the new arrangement.

To be decided by
the Panel
JA/SB

15. The role of the Judiciary in the adjudication system under the Control of Obscene and Indecent Articles Ordinance (COIAO)

The Commerce and Economic Development Bureau (CEDB) has embarked on a review of COIAO with two rounds of public consultation. During the first round of public consultation conducted from 3 October 2008 to 31 January 2009, the Judiciary and some members of the legal profession proposed to remove the administrative classification function (i.e. making an interim classification and, upon appeal, a final classification on a submitted article) from the Obscene Articles Tribunal, leaving it to deal with judicial determinations only (i.e. determining whether an article is obscene or indecent upon referral by a court or a magistrate arising from a civil or criminal proceeding). According to CEDB, there was little deliberation of this issue among the public. It would discuss within the Government and with the relevant stakeholders and look for possible improvement measures in the second round of public consultation to be commenced in the end of 2009. During the Panel's visit to the Judiciary on 13 July 2009, participating Members noted the strong view of the Judiciary about this issue and agreed that the Panel should follow it up at a future meeting.

To be advised by
JA/CEDB

CEDB advised in March 2010 upon the enquiry of the Secretariat that the timing for discussion of the item has yet to be decided.

16. Matrimonial Proceedings and Property (Amendment) Bill

The item was proposed by the Administration.

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DoJ

The Bill seeks to amend the Matrimonial Proceedings and Property Ordinance (Cap. 192) to give Hong Kong courts the power to deal with ancillary relief matters after recognition of a decree of divorce granted outside Hong Kong. According to the updated Legislative Programme for the 2009-2010 session provided by the Administration on 10 March 2010, it is the Administration's plan to introduce the Bill into LegCo in the second half of the current session.

17. Conviction rates

Concern has been raised about the high conviction rates in various levels of court. According to the data provided in the yearly review of the Prosecutions Divisions of DoJ, the conviction rates for 2008 were 94.8% in the Court of First Instance and 92.6% in the District Court. The Chairman proposed to include the subject on the Panel's list of outstanding items for discussion.

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DoJ

18. Trial by jury

There are recent calls from the legal profession for a review of the jury system in Hong Kong. Under the existing system, a District Court Judge sits alone without a jury. It has been suggested that, as Chinese is now commonly used in courts and the size of the jury pool has grown significantly, jury trials should be extended to the District Court. At the Panel meeting on 15 October 2009, members agreed to include the subject on the Panel's list of outstanding items for discussion.

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DoJ

19. Report on Hearsay in Criminal Proceedings

The Report on Hearsay in Criminal Proceedings was published by LRC in November 2009. At the meeting on 15 December 2009, the Panel agreed to discuss relevant issues at a future meeting.

To be decided by
the Panel
DoJ

20. Implementation of the scheme for granting higher rights of audience to solicitors

This item was referred to the Panel by the Bills Committee on Legal Practitioners (Amendment) Bill 2009.

To be decided by
the Panel
DoJ

The Bills Committee considered it necessary to review the scheme for

granting higher rights of audience to solicitors at an appropriate junction, say around two years after its implementation, and had referred the issue to the Panel for follow-up.

The Bill was passed by LegCo on 20 January 2010.

Council Business Division 2
Legislative Council Secretariat
24 March 2010