

**Extract from draft minutes of meeting on
Panel on Administration of Justice and Legal Services on 22 February 2010**

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VI. Non-civil service appointment of a Deputy Principal Government Counsel in the Department of Justice for implementation of the recommendations of the Working Group on Mediation

[LC Paper No. CB(2)950/09-10(08)]

53. Director of Administration and Development ("DAD") introduced the Administration's paper on the proposed creation of a non-civil service position of Deputy Principal Government Counsel ("DPGC") at the equivalent rank of DL2 in the Legal Policy Division of the Department of Justice ("DoJ") for a period of three years to provide the necessary support for the promotion of mediation in Hong Kong, and subject to the outcome of the consultation exercise on the Report, to implement the recommendations therein. Subject to the Panel's views, the Administration would seek the endorsement of the Establishment Subcommittee in late April 2010 for the approval of the Finance Committee in May 2010.

54. Mr Russell Coleman of the Bar Association indicated support for the staffing proposal.

55. The Deputy Chairman said that it was his understanding that an ethical code of conduct was usually prepared by the profession concerned. Noting from paragraph 6 of the Administration's paper that one of the duties of the proposed DPGC post was to oversee the adoption and implementation of the Hong Kong Mediation Code ("Mediation Code"), an ethical code of conduct for mediators, the Deputy Chairman sought clarification on whether the Administration would take the lead in preparing the Mediation Code.

56. DAD clarified that the Mediation Code was prepared by the Working Party's Accreditation and Training Sub-group, which was chaired by a legal professional, in consultation with the relevant mediation service providers. Referring to the accreditation system, DAD said that subject to the outcome of the consultation exercise, the profession and not the Administration would be responsible for the accreditation and regulation of mediators. In this regard, the Working Group was of the view that a single mediation accrediting body for Hong Kong could be in the form of a company limited by guarantee, and the possibility for establishing this body should be reviewed in five years taking into account the development of the mediation landscape. It was envisaged that the proposed DPGC post would be responsible for working with the mediation profession to facilitate the establishment of the accreditation body and keep in view the development of the system of accrediting mediators.

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57. Ms Audrey EU expressed reservation about the staffing proposal. While agreeing on the importance of promoting mediation, she considered that the promotion work should be spearheaded by the relevant professional bodies rather than the Administration. She also did not see any urgent need to introduce legislation on mediation, which was another job duty of the DPGC post. As she had mentioned during the discussion on agenda item V above, the more pressing task was to train more mediators, rather than legislating on mediation.

58. Referring to the job description of the proposed DPGC post attached to the Administration's paper, the Chairman said that it appeared that the post holder's main responsibility was to provide support for the promotion of mediation in Hong Kong. She also expressed reservation about the need for the proposed DPGC post.

59. In response, DAD further elaborated on the need for the proposed DPGC post. She said that subject to the outcome of the consultation exercise, in addition to promotion of mediation and preparation of the proposed legislation on mediation, the post holder was also required to work with the stakeholders on the accreditation system for mediators. He/she would also play a coordinating role in facilitating wider use of community mediation, particularly in respect of building management cases where there was a great demand for the provision of mediation services.

60. Ms Audrey EU considered it neither appropriate nor necessary to create a post in DoJ to spearhead the promotion of mediation, which should be undertaken by the relevant professional bodies. In her view, it would be more appropriate for the Home Affairs Department, rather than DoJ, to take up the coordination work relating to community mediation. She reiterated that she had reservation about the staffing proposal at the present stage.

61. The Chairman shared the view that promotion of mediation should not be spearheaded by DoJ. She further said that during the discussion under agenda item V above, members had queried the need to introduce legislation on mediation. She opined that even if legislation was to be introduced, the relevant work would probably commence only at a later stage.

62. In response, Deputy Law Officer (Civil Law) said that he noted that during the discussion on the last agenda item, Mr Russell Coleman of the Bar Association had expressed the view that a standardized system of accrediting mediators should be introduced as soon as possible. The proposed DPGC post would provide the necessary support for the development of the accreditation system for mediators in collaboration with the relevant stakeholders. Subject to the outcome of the consultation exercise, it might be necessary to commence the preparation work for the introduction of the proposed mediation ordinance at an early stage to complement the development of the accreditation system. He stressed that to take forward all the recommendations of the Working Group spanning over three subject areas of regulation, accreditation and publicity and public education, dedicated professional support at the DPGC level was needed. He added that the Administration considered DoJ the most appropriate Government department to take up these tasks relating to the development of mediation.

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63. To facilitate members' further consideration of the staffing proposal, the Chairman requested the Administration to provide a detailed timetable on the duties to be undertaken by the proposed DPGC post during the three-year period. DAD undertook to provide the requisite information.

64. Whilst expressing support for the development of mediation services, Dr Priscilla LEUNG shared the view that the Administration should provide further information on the responsibilities of the proposed DPGC post.

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