

立法會
Legislative Council

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LC Paper No. CB(2)657/11-12
(These minutes have been seen
by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Tuesday, 19 April 2011, at 8:30 am
in Conference Room A of the Legislative Council Building

- Members present** : Dr Hon Margaret NG (Chairman)
Dr Hon Priscilla LEUNG Mei-fun (Deputy Chairman)
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon Miriam LAU Kin-ye, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Paul TSE Wai-chun
- Members absent** : Dr Hon Philip WONG Yu-hong, GBS
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon LEUNG Kwok-hung
- Non-Panel Member attending** : Hon WONG Kwok-hing, MH
- Public Officers attending** : Item IV
Ms Grace LUI Kit-yuk
Deputy Secretary for Home Affairs (1)
Miss Christine CHOW Kam-yuk
Principal Assistant Secretary for Home Affairs
(Civic Affairs) 2
Mrs WILLIAMS Ka-ding, Annie
Deputy Director of Legal Aid / Litigation

Mr CHAN Wing-cho, Allan
Assistant Director of Legal Aid / Litigation

Item V

Ms Grace LUI Kit-yuk
Deputy Secretary for Home Affairs (1)

Miss Christine CHOW Kam-yuk
Principal Assistant Secretary for Home Affairs
(Civic Affairs) 2

Mr Percy LEUNG Siu-to
Assistant Secretary for Home Affairs (2)2

Item VI

Mr Benedict LAI
Law officer (Civil Law)

Mr Simon LEE
Deputy Law Officer (Civil Law)

Ms Sou CHIAM
Deputy Principal Government Counsel

Item VII

Mr Jack CHAN Jick-chi
Deputy Director of Home Affairs (2)

Ms Sharon HO Ho-shuen
Assistant Director of Home Affairs (4)

Attendance by : Item IV
invitation

Hong Kong Bar Association

Mr Samuel SUNG

The Law Society of Hong Kong

Mr Michael Vidler
Member of the Criminal law and Procedure Committee

Item V

Hong Kong Bar Association

Mr Robert PANG

The Law Society of Hong Kong

Mr Joseph LI
Council Member

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

Staff in attendance : Mr KAU Kin-wah
Senior Assistant Legal Adviser 3

Miss Ivy LEONG
Senior Council Secretary (2)3

Mrs Fanny TSANG
Legislative Assistant (2)3

Action

I. Confirmation of minutes of meeting
[LC Paper No. CB(2)1482/10-11]

The minutes of the meeting held on 28 February 2011 were confirmed.

II. Information papers issued since last meeting

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

(a) Press release provided by the Administration announcing the appointment of Mr Kevin Paul Zervos, SC as the Director of Public Prosecutions [LC Paper No. CB(2)1371/10-11(01)]; and

(b) Law Reform Commission ("LRC")'s paper on the role and work of LRC [LC Paper No. CB(2)1479/10-11(01)].

Action

3. On the paper referred to in paragraph 2(b) above, Members expressed concern that many of LRC's recommendations made in its reports published during the last 15 years had not yet been followed up. Members agreed that the Panel should hold a discussion with the Secretary for Justice, the Chairman of LRC, on his role in the law reform of Hong Kong and the work of the Commission. Members further agreed that legal profession and human rights bodies should also be invited to join the discussion.

III. Items for discussion at the next meeting

[LC Paper Nos. CB(2)1480/10-11(01) to (03)]

4. Members agreed to discuss the following items at the next regular meeting to be held on 23 May 2011 -

- (a) Issues relating to drafting of legislation and proposal for a new numbering system for bills;
- (b) Framework Agreement on Hong Kong/Guangdong Co-operation relating to co-operation on legal matters; and
- (c) Reciprocal recognition/enforcement of matrimonial judgments with the Mainland.

5. In view of the increasing number of Mainland-Hong Kong marriages, Ms Audrey EU expressed concern about the lack of progress for the Administration in taking forward LRC's recommendations in its reports on "Guardianship and custody – Part 1: Guardianship of children" and "Guardianship and custody – Part 2: International parental child abduction" in relation to the issues relating to parental child abduction and custody of children across the borders. The Chairman said that the Administration would be requested to address these issues during the discussion of the item referred to in paragraph 4(c) above at the next meeting.

IV. Criminal legal aid fees system

[LC Paper Nos. CB(2)1480/10-11(04) to (05)]

Briefing by the Administration

6. Deputy Secretary for Home Affairs (1) ("DSHA") briefed the Panel on the progress of legislative amendments on the criminal legal aid fees system as set out in the Administration's paper [LC Paper No. CB(2)1480/10-11(04)]. She informed members that upon completion of drafting of the relevant

Action

legislative amendments, the Administration would submit the Legal Aid in Criminal Cases (Amendment) Rules 2011 to the Criminal Procedure Rules Committee. She further informed members that the Administration had completed the biennial review of the criminal legal aid fees, prosecution fees and duty lawyer fees, as detailed in the Annex to the Administration's paper. The fees were proposed to be raised by 1.6% in accordance with movement in Consumer Price Index (C) ("CPI(C)") during the reference period from July 2008 to July 2010. The proposed +1.6% adjustment in the revised criminal legal aid fees would be incorporated in the Amendment Rules in one go. Subject to the Criminal Procedure Rules Committee's views, the Administration would submit the Amendment Rules to the Legislative Council ("LegCo") for consideration and approval in May/June 2011.

7. Members noted the background brief prepared by the LegCo Secretariat on the subject under discussion [LC Paper No. CB(2) 1480/10-11(05)].

Discussion

8. The Chairman considered that the revised fee rates, though not satisfactory, were more reasonable than the present rates after the current review exercise. She urged the Administration to expedite the drafting of the legislative amendments to implement the new fee structure and the revised rates so that criminal legal aid lawyers could benefit from the improved remuneration under the revised system as soon as possible.

9. Ms Miriam LAU enquired about the arrangements for future review on criminal legal aid fees. She expressed concern that the Administration might take another five to six years to review the fee rates. She urged the Administration to tightly stick to a timetable for future review. DSHA responded that according to previous discussion, the Administration would continue to discuss with the two legal professions with a view to reviewing the fee rates in two years' time from the implementation of the new rates. The Chairman suggested that the Administration should put in place a mechanism on conducting regular reviews in future.

10. Mr Albert HO said that he had expressed support for the revised fee rates a year ago hoping that the increased rates could be implemented as soon as possible so that they could serve as a basis for further upward adjustment in future. He expressed dissatisfaction with the Administration's inefficiency in taking forward the legislative work.

11. DSHA advised that while the Administration had endeavoured to expedite the drafting of the legislative amendments, it had encountered some

Action

technical problems in the course of drafting. Deputy Director of Legal Aid/Litigation supplemented that the Department of Justice ("DoJ") and the Home Affairs Bureau ("HAB") had held numerous meetings in relation to the drafting of the Legal Aid in Criminal Cases (Amendment) Rules 2011 not only to amend Rule 21 of the Legal Aid in Criminal Cases Rules (Cap. 221D) ("LACCR"), with a view to improving the payment structure of the criminal legal aid fees system, but also to amend Rule 4 of LACCR, with a view to expanding the scope of legal aid in criminal cases so that legal aid could be granted in cases to be heard in the Court of Appeal ("CA") and the Court of Final Appeal which did not involve a conviction.

12. Mr Michael Vidler, member of the Criminal Law and Procedure Committee of the Law Society of Hong Kong ("Law Society"), said that the reason why the Law Society had decided to agree with the revised rates in January 2010 was on the basis that the Administration could proceed with the legislative amendments to effect the new fee system and rates. He further said that the Law Society was given assurance that apart from the biennial review based on CPI(C), the fee rates would be reviewed generally after two years. It had been 15 months after the agreement was reached in 2010, however, the rules had not been drafted yet. He hoped that the Administration would stick to the timetable and submit the Amendment Rules to LegCo for consideration and approval in May/June 2011.

13. The Chairman, on behalf of the Panel, expressed disappointment that the Administration had taken such a long time in drafting the legislative amendments on the criminal legal aid fees system. She urged the Administration to expedite the legislative process and submit the rules to the Criminal Procedure Rules Committee as soon as possible.

V. Free legal advice service

[LC Paper Nos. CB(2)1480/10-11(06) to (07) and IN10-11-11]

Briefing by the Administration

14. DSHA introduced the Administration's paper which set out the progress in enhancing the support services for volunteer lawyers under the Free Legal Advice Scheme and the Administration's recommendation for implementing a two-year pilot scheme to provide assistance for litigants in person ("LIPs") who had commenced legal proceedings in the District Court, High Court and CA but were not qualified for legal aid assistance. She informed members that under the Administration's initial proposal, assistance and advice would be provided to LIPs on the rules and procedures relating to court proceedings by a service provider sponsored by HAB [LC Paper No. CB(2)1480/10-11(06)].

Action

Views of the two legal professional bodies

The Bar Association

15. Members noted the submission from the Hong Kong Bar Association ("Bar Association") which was tabled at the meeting and subsequently issued to members vide LC Paper No. CB(2)1576/10-11(01) on 20 April 2011.

16. Mr Robert PANG highlighted the Bar Association's views on the pilot scheme to provide free legal advice to LIPs. He said that while it would be difficult for the Bar Association to comment on the scheme until details of which were made available, the Bar Association had queries as to why it was necessary to restrict the legal advice to procedural matters only and whether a 45-minute-session would be adequate for providing proper advice to LIPs. As regards the target audience of the scheme, Mr PANG added that if the scheme was targeted for those who could not afford legal representation, the Bar Association queried why these people were not assisted under a more comprehensive legal assistance scheme. If those LIPs could afford legal representation, it queried why members of the two legal professional bodies would have to provide legal advice service on a pro bono basis. The Bar Association requested the Administration to provide more details about the scheme.

The Law Society

17. Mr Joseph LI said that the Law Society supported the Bar Association's views on the pilot scheme. He agreed that it was not sufficient to provide legal advice to LIPs merely on procedural matters and that a duration of 45 minutes for each session would not be adequate. He further said that as both substantive law and procedural law were very often involved in the legal proceedings in the District Court and the High Court, there should be a comprehensive scheme in place to provide legal advice to LIPs. Mr LI informed members that the Law Society would provide support to its members who offered free legal advice as a service to the community. The Law Society had set up a helpline for the public to obtain free legal advice regarding personal injuries and members of the public would be provided with a 45-minute session of free legal advice in this respect. The Law Society was of the view that the Administration should not continue to rely on the two professional bodies to provide legal advice service for members of the public on a pro bono basis. The Administration should conduct a comprehensive review on the provision of legal advice and representation to the members of the public, especially for LIPs. The Law Society considered that there should be basic legal assistance provided to LIPs or else court proceedings would be unduly lengthened.

Action

Discussion

18. Members noted the background brief prepared by the LegCo Secretariat on free legal advice service [LC Paper No. CB(2)1480/10-11(07)] and the information note on the same subject prepared by the Research Division of the LegCo Secretariat [IN10/10-11].

19. Ms Audrey EU was of the view that it would be appropriate to restrict the provision of free legal advice to LIPs to procedural matters. As the duration of the interview would only last for 45 minutes and all the relevant documents might not be available for the lawyers, she considered that it would be difficult for lawyers to offer any comment on the merits of the case.

20. Noting that apart from the Free Legal Advice Scheme of the Duty Lawyer Service ("DLS"), the Bar Association and the Law Society also provided free legal advice services to the community, Ms Audrey EU considered that the Administration should be prudent in allocating its resources to those most in need of the service to ensure that there was no wastage or duplication of resources. She also considered that one-off legal advice was inadequate to meet the need of the public, particularly for LIPs, and follow-up sessions should be provided. She suggested that the Administration could make reference to the Community Legal Information Centre ("CLIC") run by the University of Hong Kong ("HKU") where the public could continue to seek legal information on the website.

21. DSHA responded that there was a comprehensive legal aid system in place to provide legal advice and legal representation to those in need. The Administration had considered a variety of views and had made reference to the Free Legal Advice Scheme of DLS when deciding on the provision of free legal advice on procedural matters to LIPs under the pilot scheme. The Administration had also consulted HAB, the Legal Aid Department and the Judiciary Administration, and paid a visit to the Royal Courts of Justice Advice Bureau in the United Kingdom ("UK") which provided legal and other advice services to unrepresented litigants before designing the framework for the scheme. She said that it would not be feasible to answer all the questions of LIPs in an advice session and it would be difficult to recruit volunteer lawyers if the LIP scheme would provide legal advice on all matters. The Administration hoped that the service operator engaged to operate the LIP scheme would have its resident lawyers who would provide service to the clients together with volunteer lawyers recruited. She further said that in determining the duration for each advice session, the Administration had made reference to other countries which provided similar service and noted that the duration of each advice session for the clients would last for around 45 minutes.

Action

22. In response to the Chairman's enquiry, DSHA advised that in order to maintain the impartiality of the Judiciary, the Resource Centre set up in the High Court would not provide legal advice to the public. The Resource Centre was set up to provide to the public information on court rules and procedural matters in civil proceedings in the High Court and District Court. In view of the increasing number of LIPs which might pose a challenge to the Hong Kong civil justice system, the Administration intended to embark on a trial scheme to provide assistance for those who had initiated legal proceedings but were not qualified for legal aid assistance and who required advice on the rules and procedures relating to court proceedings.

23. Mr Albert HO said that he agreed with the view of the two legal professional bodies' view that it was not practicable to restrict the legal advice given to LIPs on procedural matters. He considered that the clients would be disappointed if the lawyers would not explain the legal concepts and principles to them. He also shared Ms Audrey EU's view that it would not be feasible to offer any legal advice or comment on the merits of the case in an advice session which lasted for only 45 minutes. The Chairman explained that during past discussions on the services at the Resource Centre which was set up in the High Court to provide to the public information on court rules and procedural matters in civil proceedings in High Court and District Court, members considered that free legal advice service akin to that provided under the Free Legal Advice Scheme of DLS should be provided to unrepresented litigants in order to complement the limited service of the Resource Centre.

24. Mr Albert HO enquired how the Administration could ascertain whether LIPs were not qualified for legal aid assistance in order to be eligible for the trial scheme. DSHA responded that as no means test would be conducted in order to simplify the administrative procedure, the staff of the service operator would brief the public on the objective of the pilot scheme when they requested for appointments. The service operator would advise any client who was qualified for legal aid to apply for such assistance. Should the lawyer find out that a client could in fact afford private legal services during the interview, the lawyer would suspend the interview to avoid abuse of the service.

25. The Chairman suggested that paragraph 19(c) of the Administration's paper should be amended to reflect that the pilot scheme was proposed to be made available to those who had not been granted legal aid instead of those who were not qualified for legal aid assistance to avoid ambiguity. DSHA agreed to make amendments accordingly.

26. Noting from paragraph 18 of the Administration's paper that the Administration had planned to provide sponsorship for a service operator to

Action

provide free legal advice to LIPs on procedural matters, Dr Priscilla LEUNG enquired whether the Administration had any particular service operators in mind and whether it would consider providing sponsorship to different kinds of non-governmental organizations ("NGOs") which were currently offering free legal advice services to the community.

27. DSHA said that the Administration was open-minded and would consider any suitable service operators for the pilot scheme. As the Government currently provided subvention for DLS to run the Free Legal Advice Scheme, DLS would be one of the possible service operators. The Administration would also consider operating the scheme by the Government through employing duty lawyers direct to provide free legal advice to LIPs.

28. Dr Priscilla LEUNG further enquired whether the provision of legal advice to LIPs could be enhanced to cover legal proceedings on the Mainland. She was of the view that the Administration could provide sponsorship to NGOs which had the expertise in this area to offer free legal advice to meet the public need for such services. Mr Paul TSE, however, considered that with the limited legal resources in Hong Kong, it would not be practicable for lawyers to provide free legal advice to LIPs on procedural matters for the proceedings in Hong Kong as well as on the Mainland.

29. DSHA advised that given the limited time for each interview and manpower constraint, the Administration considered it appropriate to provide free legal advice on procedural matters relating to litigations in Hong Kong for LIPs under the pilot scheme. The Administration would continue to encourage relevant organizations to enhance the provision of legal information to cover information on Mainland legal issues. She said that HKU would try its best to make available at CLIC information regarding Mainland-Hong Kong matrimonial matters which was a hot topic to the general public. She added that the Administration was open-minded and would consider sponsoring any proposals which sought to provide members of the public with free legal advice services.

30. Mr Paul TSE expressed support for the pilot scheme. He said that the scheme would help LIPs understand the rules and procedures of the court which would alleviate the strain exerted by the growing number of LIPs on judicial time and resources. Noting from paragraph 22 of the Administration's paper that the client would be referred where appropriate to other relevant bodies if he or she required free legal representation, Mr TSE enquired whether the Administration would consider referring cases to lawyers in private practice with a view to broadening the services of the scheme. He considered that on the basis that the lawyer would not abuse the system, it would be a feasible arrangement for the lawyer who had provided initial free legal advice to

Action

represent the client in the proceedings. Such arrangement would provide an incentive to encourage more lawyers to participate in the scheme.

31. DSHA said that depending on the circumstances, if the client required free legal representation, he or she would be referred to the Legal Aid Department or the free legal representation scheme run by the Bar Association. At present, there was no arrangement for referring cases to private lawyers under the Free Legal Advice Scheme of DLS. The Administration would consult the two legal professional bodies on the feasibility of such arrangement.

32. The Chairman was of the view that given DLS had already offered four legal assistance schemes (viz the Duty Lawyer Scheme, the Legal Advice Scheme, the Tel-Law Scheme and the Convention Against Torture Scheme), the Administration should re-consider whether the pilot scheme should be operated by DLS. The Chairman suggested that the Administration should review the operation and effectiveness of the Free Legal Advice Scheme which had come into operation since 1978, with a view to identifying areas for improvement and attracting more lawyers to join the Scheme. She also suggested that the Administration should invite HKU and the Chinese University of Hong Kong to comment on how the services of CLIC could be expanded. She further suggested that the Administration could make reference to overseas experience regarding the provision of free legal advice through telephone service so as to save the commuting time of participating lawyers.

33. The Chairman suggested and members agreed that a special meeting be held in July 2011 to further discuss the provision of free legal advice service with the Administration, service operators of various free legal advice schemes and NGOs which were frequent users of such services. The Chairman also invited members to make reference to the information note prepared by the Research Division of the LegCo Secretariat on free legal advice service in Hong Kong, England and Wales of UK, the Province of Ontario of Canada and the State of New South Wales of Australia.

VI. Development of mediation services
[LC Paper No. CB(2)1480/10-11(08)]

VII. Mediation service for building management cases
[LC Paper Nos. CB(2)1480/10-11(09) to (10)]

34. The Chairman proposed that agenda items VI and VII be discussed jointly as both items were related to mediation services. Members agreed.

Action

35. Members noted the background brief prepared by the LegCo Secretariat on development of mediation services and mediation services for building management cases [LC Paper No. CB(2)1480/10-11(10)].

Briefing by the Administration

36. Law Officer (Civil Law) briefed members on the work being undertaken by DoJ to implement the recommendations of the Working Group on Mediation ("Working Group") chaired by the Secretary for Justice, details of which were set out in the Administration's paper [LC Paper No. CB(2)1480/10-11(08)].

37. Deputy Director of Home Affairs ("DDHA") briefed members on the measures and mediation services available to owners and Owners' Corporations ("OCs") in resolving building management disputes and the Government's efforts in encouraging the use of these services, as set out in the Administration's paper [LC Paper No. CB(2)1480/10-11(09)].

38. Mr WONG Kwok-hing welcomed the Administration's plan to introduce the Mediation Bill into LegCo by the end of 2011. He enquired whether the Administration would facilitate actively the scrutiny of the Bill with a view to completing the legislative work before the end of the current term of LegCo. On mediation service for building management cases, Mr WONG considered that in order to encourage parties to use mediation as an efficient and cost-effective means to resolve their disputes, the Administration should continue to provide mediation services on a pro bono basis and suitable venues for conducting mediations. He enquired whether the mediation scheme available to owners and OCs in resolving building management disputes as set out in paragraphs 7 to 9 of the Administration's paper would be maintained after the enactment of the Mediation Ordinance.

39. Law Officer (Civil Law) responded that the Administration would expedite its work process and seek to introduce the Mediation Bill into LegCo towards the end of 2011. It was the Administration's aim to complete the legislative work of the Bill within the current LegCo term.

40. DDHA said that the Administration was aware that in order to achieve the goal of mediation, the disputes should be resolved in an efficient, cost-effective, simplified and flexible way. It was the Administration's plan to continue the provision of free mediation service for building management cases and the Administration would expand the service where necessary. As regards the venues for mediation, DDHA advised that the District Facilities Management Committees of the Yau Tsim Mong District Council and the Wan Chai District Council had approved the use of venues and facilities at the Henry G Leong

Action

Yaumatei Community Centre and Leighton Hill Community Hall respectively as community venues for mediation. He added that consideration would be given to extending the mediation scheme to community centres in other districts. Mr WONG Kwok-hing hoped that the Administration would make available venues in New Territories for conducting mediations too.

41. Dr Priscilla LEUNG and Mr Albert HO enquired about the success rate of disputes cases which were resolved through mediation. Mr HO also enquired about the waiting time required for the provision of mediation services. He further asked whether the Court had the power to order parties in a dispute to use mediation to resolve their differences at an initial stage. Pointing out that mandatory mediation for matrimonial cases had been proved to be successful, he asked whether the Administration would consider implementing mandatory mediation for certain cases to save judicial resources.

42. Referring to paragraph 6 of the Administration's paper, DDHA said that under the free mediation scheme of the Home Affairs Department ("HAD") operated in collaboration with the Hong Kong Mediation Council and the Hong Kong Mediation Centre, 19 cases had been handled so far. For three of these cases, settlement agreements were signed after mediation. He said that it usually took about one to two weeks' time to arrange for the first mediation meeting under this scheme. As regards cases handled in the community venues, DDHA advised that for the period from May 2010 to December 2010, 13 cases had been conducted in the Henry G Leong Yaumatei Community Centre, of which 11 cases involved disputes over building management; whereas 16 cases had been conducted in the Leighton Hill Community Hall, six of these cases involved disputes over building management. As the Pilot Scheme on Community Venues for Mediation was operated by DoJ, he said that HAD did not have the success rate of these cases.

DoJ 43. The Chairman said that since DoJ was responsible for co-ordinating the scheme, it should provide information on the success rate of disputes cases which were resolved through mediation, in particular those relating to building management, and on the waiting time required for the provision of mediation services.

44. On whether the court had the power to order mandatory mediation, Deputy Law Officer (Civil Law) advised that the President of the Lands Tribunal had issued a set of directions for mediation of building management cases in May 2009, which was similar to the High Court Practice Direction 31 - Mediation, to encourage and facilitate parties of building management cases in resolving their differences through mediation. However, it was not mandatory.

Action

45. Dr Priscilla LEUNG enquired about the reason for the low success rate as set out in paragraph 6 of the Administration's paper. She considered that the Administration should consider other alternative dispute resolution procedure, such as arbitration, if the success rate of dispute cases which were resolved through mediation was not satisfactory.

46. Deputy Law Officer (Civil Law) said that since mediation was confidential, statistics on success rate of mediation was not generally available. DOJ would approach mediation services providers such as the Hong Kong International Arbitration Centre for data on the success rate of mediation and would provide such information to the Panel when available. He further said that the Administration generally considered mediation an effective means to resolve disputes. The Administration would review the remaining 16 cases to ascertain as to why settlement had not been reached. As regards DoJ's role in the scheme, he clarified that the trial scheme was conducted by HAD and was not related to the work of the Working Group or to DoJ. He said that mediators conducting community mediation on pro bono basis could use the mediation venues free of charge during specific time slots in the Leighton Hill Community Centre in Happy Valley and the Henry G. Leong Community Centre in Yau Ma Tei under the Pilot Project on Community Venues for Mediation.

47. The Chairman said that the Administration should enhance its publicity work for the promotion of mediation in order to give members of the public the right expectation, as well as a better understanding of the effectiveness of mediation in resolving disputes.

VIII. Any other business

48. There being no other business, the meeting ended at 10:35 am.