

**立法會**  
**Legislative Council**

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LC Paper No. CB(2)1932/11-12  
(These minutes have been seen  
by the Administration)

**Panel on Administration of Justice and Legal Services**

**Minutes of meeting**  
**held on Tuesday, 20 December 2011, at 2:30 pm**  
**in Conference Room 1 of the Legislative Council Complex**

- Members present** : Dr Hon Margaret NG (Chairman)  
Dr Hon Priscilla LEUNG Mei-fun, JP (Deputy Chairman)  
Hon Albert HO Chun-yan  
Hon James TO Kun-sun  
Hon LAU Kong-wah, JP  
Hon Miriam LAU Kin-yee, GBS, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Paul TSE Wai-chun, JP  
Hon LEUNG Kwok-hung
- Members absent** : Dr Hon Philip WONG Yu-hong, GBS  
Hon Emily LAU Wai-hing, JP  
Hon Timothy FOK Tsun-ting, GBS, JP
- Public Officers attending** : Item III  
  
Mr WONG Yan-lung, SC  
Secretary for Justice
- Item IV  
  
Miss Emma LAU  
Judiciary Administrator
- Mr NG Sek-hon  
Deputy Judiciary Administrator (Operations)
- Mrs Angela LO  
Assistant Judiciary Administrator  
(Corporate Services)

Mrs Priscilla TAM  
Project Director  
Architectural Services Department

Mr HO Chiu-fan  
Chief Project Manager  
Architectural Services Department

Item V

Mr CHENG Yan-chee, JP  
Deputy Secretary for Home Affairs (1)

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

Mr CHAN Heung-ping, William, JP  
Director of Legal Aid

Ms CHUNG Yee-ling, Alice  
Deputy Director of Legal Aid / Administration

**Attendance by : Item III**  
**invitation**

The Law Reform Commission of Hong Kong

Mr Stuart M I Stoker  
Secretary

Item V

Hong Kong Bar Association

Mr Ruy Barretto, SC

Mr Nicholas Pirie

The Law Society of Hong Kong

Mr Leslie YEUNG  
Member of Legal Aid Committee

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

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

Miss Cindy HO  
Senior Council Secretary (2)3

Ms Wendy LO  
Council Secretary (2)3

Mrs Fonny TSANG  
Legislative Assistant (2)3

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**I. Information papers issued since last meeting**

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

**II. Items for discussion at the next meeting**

[LC Paper Nos. CB(2)624/11-12(01) to (03)]

2. In accordance with the list of items tentatively scheduled for discussion in the current session, members agreed to discuss the following items at the next regular meeting on 30 January 2012 -

- (a) Implementation of the scheme for granting higher rights of audience to solicitors;
- (b) The role of the Judiciary in the adjudication system under the Control of Obscene and Indecent Articles Ordinance; and
- (c) Free legal advice service – A two-year pilot scheme to provide legal advice for litigants in person.

*(Post-meeting Note: With the concurrence of the Chairman, discussion on the item of "Issues relating to the provision of legal aid for judicial review cases" originally scheduled for discussion in February 2012 was advanced to the regular meeting on 30 January 2012, while the discussion on the item referred to in paragraph 2(c) above was deferred to the regular meeting scheduled for 27 February 2012.)*

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3. The Chairman advised that the Court had expressed the view in its judgments that the "as of right" ground of appeal according to section 22(1)(a) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) (which stipulated that a civil appeal should lie as of right from any final judgment of the Court of Appeal where the matter in dispute amounted to or was of the value of \$1 million or more) should be re-considered/abolished. At her suggestion, members agreed that the Panel should take up the issue with the Administration and the item be included in the list of outstanding items for future discussion.

4. The Chairman further advised that it was a practice for the Panel to visit the Judiciary for a direct exchange of views between Legislative Council ("LegCo") Members and members of the Judiciary on matters of mutual concern. Subject to members' views, she would liaise with the Judiciary Administration on the appropriate date and programme for the visit. Members agreed.

*(Post-meeting Note: With the concurrence of the Chairman, the Panel's visit to the Judiciary was conducted on 27 February 2012.)*

**III. Role and work of the Law Reform Commission**

[LC Paper Nos. CB(2)1479/10-11(01), CB(2)584/11-12(01), CB(2)624/11-12(04), CB(2)684/11-12(01) and CB(2)752/11-12(01)]

Briefing by the Administration

5. Members noted that the Law Reform Commission ("LRC") provided an information paper on the role and work of LRC in April 2011 and a supplementary information note for the meeting [LC Paper Nos. CB(2)1479/10-11(01) and CB(2)584/11-12(01)]. At the invitation of the Chairman, the Secretary for Justice ("SJ") briefly explained the composition and work of LRC. SJ said that the Government attached great importance to the recommendations made by LRC. The Director of Administration had issued a set of guidelines in October 2011 under which bureaux and departments having policy responsibility over any LRC report were required to provide at least an interim response within six months of publication of the report and a detailed public response within 12 months of its publication. The bureaux and departments were required to give full consideration to the recommendations made by LRC and set out which recommendations they would accept, reject or intend to implement in modified form in the detailed public response.

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*(Post-meeting note: The speaking notes of SJ were issued to members vide LC Paper No. CB(2)684/11-12(01) on 28 December 2011).*

6. Members also noted an information note prepared by the LegCo Secretariat on the subject under discussion [LC Paper No. CB(2)624/11-12(04)].

Discussion

*Implementation status of LRC reports*

7. Members in general expressed dissatisfaction at the delay in implementing LRC's recommendations. Citing the six LRC reports related to the family law as an example, Mr Albert HO said that some of these reports were made on the basis of studies conducted by LRC back in 1997 or 1998 but no action had been made to take the recommendations forward, including those related to guardianship and custody. As a former chairman of one of the LRC sub-committees on the relevant topics, Ms Miriam LAU also found it discouraging that the LRC Report on Child Custody and Access had not yet been taken forward by the Administration. She was worried that those recommendations, which were modeled on overseas legislation, would become out of date due to the lapse of time.

8. SJ informed members that the Administration would be issuing a consultation paper on child custody and access on 28 December 2011 and the Labour and Welfare Bureau would brief the Panel on Welfare Services in January 2012 on the subject. He noted that the adoption of 'joint parental responsibility' model and some of the recommendations of the relevant LRC report would fundamentally change the concept of 'custody' underpinning the existing family law and would have far-reaching implications and hence these proposals would draw different views from the stakeholders.

9. Mr LAU Kong-wah asked about the difficulties in taking forward the recommendations made in the LRC Report on Stalking and what measures could be taken to expedite process in future. SJ explained that, whilst the LRC Report on Stalking entailed a degree of controversy, it was comparatively less controversial than the other LRC reports on privacy, and the Constitutional and Mainland Affairs Bureau ("CMAB") would first deal with this report. In this connection, CMAB had just published (on 19 December) a consultation paper on an anti-stalking law. As regards the other LRC reports on privacy, the relevant consideration by CMAB was that these reports were highly controversial and CMAB would need to reach consensus in the community and strike a balance between protection of privacy and press freedom. They would be handled at a later stage.

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10. Ms Audrey EU observed that some topics which LRC was commissioned to study were considered of low priority or not even taken forward by the Administration. She enquired if similar problem was encountered by law reform bodies in other jurisdictions and how this could be resolved. Ms EU also considered it a duplication of efforts for LRC and the bureaux to conduct separate public consultation exercises on the same subject matter. Mr Paul TSE expressed a similar view, saying that some issues under study might deviate from the policy agenda of the Administration. He suggested that studies by LRC on areas which were considered controversial in nature in the light of overseas experience should be avoided in order not to waste resources or create unrealistic expectation.

11. Responding to the concerns on the topics which LRC was commissioned to study, SJ reiterated that the LRC's remit was to consider for reform those aspects of the law which were referred to it by SJ or the Chief Justice in order to address inadequacies in existing legislation. When selecting topics for LRC's study, consideration would also be given to whether there were relevant studies by other organizations or whether it would be done more effectively by the bureaux. SJ pointed out that there was no single model of law reform agency adopted in common law jurisdictions and the structures of agencies and the way in which they worked would vary greatly. On the experience of law reform agencies of other jurisdictions, SJ said that, when attending a recent conference on law reform, he was given to understand that these agencies, to some extent, needed to handle the issue of securing the cooperation of the executive authorities in implementing their recommendations. On the need for bureaux to conduct further public consultation, SJ said that since LRC had conducted public consultation before formulating its proposals in its final report, the views of the public had been taken into account. However, since proposals made by LRC might involve policy considerations and might draw different views from the stakeholders, bureaux might need to carry out detailed research and public consultation before introducing any bill into the legislature. SJ added that subject to the availability of additional resources, he would consider including draft legislation in the final LRC report where appropriate to expedite the implementation process.

12. Mr LEUNG Kwok-hung expressed the view that making changes to the law was a political issue which would not be brought about by the law reform agencies such as LRC and the question about the need for legislation would be dictated by the Administration as in the case of the proposed replacement mechanism for filling of mid-term vacancies in LegCo. SJ stressed that the independence of LRC which comprised both academic and practicing lawyers and prominent members of the community was beyond doubt. Moreover,

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public consultation would be conducted in the process of finalizing its reports to ensure that the LRC's recommendations would have sufficient public support. That said, the setting of a policy priority would be a matter for the Administration.

*Guidelines for consideration of LRC reports*

13. Mr LAU Kong-wah observed that according to the guidelines for consideration of LRC reports, the relevant bureaux were only required to provide a detailed public response as soon as possible within the initial 12 months' period but no timeframe was specified for taking forward the recommendations made. He was concerned that it could not address the problem that some LRC reports were left idle for years with little or no development.

14. Ms Audrey EU sought clarification on whether the guidelines for consideration of LRC reports were only applicable to reports newly published by LRC; and whether the 12 months' period from which a response was sought from the Administration referred to the final report published by LRC. Ms Miriam LAU considered that a timeframe should also be specified for the relevant bureaux to respond to those reports published by LRC before the issuance of the guidelines. Mr Albert HO enquired whether the relevant bureaux would revert to LRC on the outcome of its consideration on the LRC reports, in particular the recommendations which they would accept, reject or intend to implement in modified form.

15. In response, SJ explained that the guidelines which were issued in October 2011 would apply to newly published LRC reports while the responses of the Administration to those reports already published had been uploaded on the LRC's website for the public's information. SJ reiterated that relevant bureaux were required to provide a detailed public response to him within 12 months of the publication of the LRC reports, unless otherwise agreed by him as Chairman of the LRC.

*Mechanism to monitor the progress in implementing LRC's recommendations*

16. The Chairman was of the view that while the bureaux concerned were responsible for the consideration and implementation of LRC's recommendations, law reform had not always been a high priority of bureaux. Hence many LRC's recommendations had not yet been followed up. She considered that while SJ had the responsibility to keep the Hong Kong's system of laws up-to-date, LegCo Panels also had a role to play in facilitating law reform work. As the recommendations put forward in LRC reports were

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results of detailed studies by LRC members who had rich experience and expertise in their respective professional and other fields, the hard work of LRC should be given full and fair consideration within a reasonable timeframe or else the validity and relevance of LRC's recommendations and the supporting research and consultation responses were likely to be diminished the longer the reports remained unimplemented. Against such background, the Chairman consulted members on whether and how LegCo should put in place a mechanism so as to keep the issue under review on a regular basis.

17. Mr LAU Kong-wah echoed the Chairman's view. He stressed the importance of the LRC reports to be followed-up in a timely manner, saying that the LegCo Panels had a role to play to gauge the views of stakeholders on whether or not to implement the LRC's recommendations by legislative means. Mr LAU suggested that LRC should have an annual review with the Panel and considered that such enhanced cooperation between the executive and the legislature would be conducive to more effective implementation of the LRC's recommendations through legislative means.

18. SJ said that he did not see much problem for LRC to provide the responses by relevant bureaux, which would be uploaded onto the website of LRC, for the Panel's reference. Referring to the concerns about implementation of the LRC's recommendations, SJ said that the projects of LRC covered a wide range of subjects and upon publication of its reports, they would be forwarded to the relevant bureaux for consideration and follow-up. He pointed out that the subject matters for law reform usually carried a certain degree of controversy and would also involve policy considerations. Hence, not all reports could be implemented within a short period of time. As chairman of LRC, he had specifically impressed upon the responsible bureaux and departments the importance of responding to LRC reports and of speeding up their decisions and actions on implementation, and he would continue to do so. In addition, the LRC Secretariat had been following up on individual projects with the relevant bureaux and since 2009, their latest responses were uploaded on the website of LRC for the public's information. SJ expected that issuance of the guidelines for consideration of LRC reports would already help expedite the implementation process.

19. After deliberation, the Chairman suggested that a mechanism should be established for LegCo to monitor the Government's progress in implementing the LRC's recommendations under which SJ would submit to the Panel for discussion an annual report flagging up the progress in respect of the LRC reports which had not yet been implemented, say, after the Policy Address in each year; and the Panel would copy the annual report to the relevant Panels to facilitate their follow-up with the bureaux and departments having policy



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responsibility over the respective LRC reports, and where appropriate, to invite members of the Panel and all other Members to join the future discussion. Ms Miriam LAU advised that the issue should be referred to the House Committee for consideration as the proposed arrangement would touch upon the work of other Panels.

20. At the Chairman's suggestion, members agreed that the Chairman should write on behalf of the Panel proposing to the House Committee the introduction of a mechanism for the Panels of LegCo to monitor the Government's progress as elaborated in the paragraphs above. The Chairman directed the Clerk to prepare a draft letter to the Chairman of the House Committee.

*(Post-meeting Note: A draft letter to the Chairman of the House Committee [LC Paper No. CB(2)752/11-12(01)] was endorsed at the Panel meeting on 27 February 2012 and the Panel's recommendation was endorsed at the House Committee meeting on 2 March 2012.)*

**IV. Proposed construction of the West Kowloon Law Courts Building**  
[LC Paper Nos. CB(2)584/11-12(02), CB(2)624/11-12(05) and CB(2)664/11-12(01)]

Briefing by the Administration

21. Chief Project Manager, Architectural Services Department presented a video which illustrated the design, location and accessibility of the proposed construction of the West Kowloon Law Courts Building ("WKLCB"). Deputy Judiciary Administrator (Operations) then elaborated on the provision of facilities inside the WKLCB from the court users' perspective with the aid of a PowerPoint presentation [LC Paper Nos. CB(2)584/11-12(02) and CB(2)664/11-12(01)]. Members noted from the proposal of the Judiciary Administration that the estimated cost of the project was \$2,723.1 million in money-of-the-day prices and the estimated annual recurrent expenditure arising from the project was \$50.4 million. Subject to the Panel's views, the Judiciary Administration planned to seek the endorsement of the Public Works Subcommittee ("PWSC") on 8 February 2012 for the approval of the Finance Committee ("FC") on 13 April 2012.

22. Members also noted the background brief prepared by the LegCo Secretariat on the subject under discussion [LC Paper No. CB(2)624/11-12(05)].

Discussion

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*Provision of facilities at and location of WKLCB*

23. Ms Audrey EU said the environment of the Coroner's Courts located in the Eastern Law Courts Building was very congested. As a result, the waiting time was long and there was a lack of waiting room facilities for the deceased's family. She hoped that the purpose-built facilities at WKLCB would help solve the problems. Judiciary Administrator ("JA") said that due to space constraints, there was much room for improvement with regard to the existing court facilities in the Eastern Law Courts Building. Addressing the concerns of Ms EU on the sufficiency of courtrooms for the Coroner's Courts in WKLCB, JA said that three courtrooms were designated for use of the Coroner's Courts (as opposed to two courtrooms currently provided in existing premises); and a total of 32 courtrooms of various sizes in WKLCB would ensure flexibility in the deployment of courtroom facilities more efficiently. There was also provision of new facilities for the Coroner's Courts including a waiting room for the family of the deceased and consultation room facilities to meet operational needs.

24. Ms Audrey EU enquired whether the library facility at WKLCB would be open to members of the public. She also enquired whether a resource centre for unrepresented litigants, similar to the existing facility in the High Court Building, would be provided at WKLCB. JA replied that the library was for the exclusive use of judges and judicial officers. As regards provision of information for members of the public, as more litigants in persons would be expected in WKLCB where the Small Claims Tribunal was housed, an Information and Enquiry Centre would provide the needed enquiry and information services for court users.

25. Mr Albert HO enquired whether there would be courtrooms of larger sizes to accommodate parties to the case and witnesses; and whether the seating capacity of the public gallery was able to accommodate more members of the public if cases of wide public interest were heard; and whether seats would be designated for journalists. JA replied that there would be a multi-purpose mega courtroom of 240 square metres with the provision of 110 seats in the public gallery and 10 seats for the press gallery, while other courtrooms would be of small to medium sizes ranging from around 70 to over 180 square metres in order to better utilize the space for various operational needs.

26. Mr Albert HO asked why that a canteen was not included in the design of the proposed WKLCB. JA replied that in accordance with the prevailing Government policy, canteen facilities were generally not provided in Government accommodation. The policy was formulated by the Administration after the subject was examined by the Director of Audit and

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considered by the Public Accounts Committee. In the proposed WKLCB project, the provision of canteen facilities was not justified given its convenient location and the availability of eating places in its vicinity. Hence, only a convenient store and vending machines would be provided for the convenient use of court users.

27. Dr Priscilla LEUNG said that the proposed WKLCB was located in the old district and surrounded by high-rise residential buildings which she considered would undermine the image and public perception of the Courts, hence she had raised the issue of the location of the proposed WKLCB with the Panel in April 2010. However, it was disappointing to note that her suggestion of considering Site No. 6 as an alternative site for the proposed WKLCB was turned down by the Judiciary Administration in July 2010 on the ground that identifying an alternative site would delay the project and that the WKLCB project should commence as early as practicable. Dr LEUNG further stressed that the proposed WKLCB should be located at a place with spacious surroundings and enquired how the new building was to achieve compatibility with the surrounding developments.

28. JA said that the choice of location with its relevant considerations had already been set out in a previous paper provided to and considered by the Panel in July 2010. To briefly recapitulate, the Judiciary Administration emphasized a high degree of accessibility and the provision of sufficient infrastructure in the choice of location. She stressed that the Judiciary Administration maintained a close liaison with the Architectural Services Department and departments concerned with a view to enhancing the accessibility of WKLCB for court users.

*Design of the proposed WKLCB*

29. Ms Audrey EU expressed concern that the design of the proposed WKLCB was similar to any typical office building which, she considered, was unable to reflect the solemn and dignified image of the Court. Mr LEUNG Kwok-hung expressed a similar concern. The Chairman said that members had all along been emphasizing that the design of the new law courts building should reflect the importance, independence and dignity of the court but the design fell short of members' expectation. While the Panel would not object to the submission of the proposed project to PWSC, members' concerns would be relayed to PWSC for consideration at its meeting on 8 February 2012.

**V. Further expansion of the Supplementary Legal Aid Scheme**  
[LC Paper Nos. CB(2)600/11-12(01) and CB(2)624/11-12(06)]

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30. Deputy Secretary for Home Affairs ("DSHA") briefed members on the Administration's paper [LC Paper No. CB(2)600/11-12(01)] outlining the progress of amendments to the Legal Aid Ordinance ("LAO") (Cap. 91) and Regulations in respect of the Ordinary Legal Aid Scheme ("OLAS") and expansion of the Supplementary Legal Aid Scheme ("SLAS"), as well as the Administration's views on other proposals to expand SLAS. Members noted that the Administration aimed to submit the legislative proposals to LegCo for consideration and approval in early 2012. Subject to LegCo's approval, the Administration would seek approval from FC on the proposed injection of \$100 million to the SLAS Fund by mid-2012.

31. Members also noted the updated background brief prepared by the LegCo Secretariat on the subject matter [LC Paper No. CB(2)624/11-12(06)].

32. The Chairman, Mr Albert HO and Ms Audrey EU declared their respective interest that each had been engaged by the Legal Aid Department to handle legal aid cases.

Views of the deputations

*Hong Kong Bar Association ("Bar Association")*

33. Mr Ruy Barretto highlighted the views of the Bar Association as detailed in its submission [LC Paper No. CB(2)648/11-12(01)]. In gist, the Bar Association considered that the Home Affairs Bureau ("HAB") had adopted improper principles (e.g. the type of cases to be covered by SLAS should have a very high chance of success; involve significant injury or injustice to the individual with claim amounts exceeding \$60,000) in recommending further expansion of SLAS. The Bar Association was concerned that small cases with claim amounts below \$60,000 would be excluded from SLAS if such principles were applied.

34. Mr Ruy Barretto further said while the Bar Association welcomed the study on the inclusion of derivatives claims under OLAS, it considered that such claims should be covered under SLAS as well. The Bar Association also took the view that the Administration should expand SLAS to cover claims against property developers by minority owners in respect of compulsory sales of building units. The Bar Association noted with concern that only seven of the 16 recommendations about SLAS were underway in some form with only five recommendations were partly pursued by the Administration. It considered that the Administration should make use of the injection of \$100 million to the SLAS Fund to roll forward a comprehensive package of reforms

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of SLAS and take on board the remaining recommendations. The Bar Association hoped that the related legislative proposals could be submitted by the Administration to LegCo by February 2012.

*The Law Society of Hong Kong ("Law Society")*

35. Mr Leslie YEUNG said that the Law Society shared the views of the Bar Association that the scope of SLAS should be further expanded. The Law Society maintained its stance on the expansion of SLAS presented to the Panel in March 2011.

Discussion

36. The Chairman requested the Administration to submit its legislative proposals by February 2012 for early implementation of the proposed expansion of SLAS. She also enquired when the legislative proposals could be put into effect. DSHA advised that the legislative proposals would be put into effect after the Administration sought the approval from FC on the proposed injection of \$100 million to the SLAS Fund in mid-2012 following passing of the legislative proposals by LegCo. In response to the Chairman, DSHA clarified that money claims in derivatives of securities, currency futures or other futures contracts were proposed to be covered under OLAS only. Mr Albert HO echoed the view of the Bar Association that the proposed expansion of SLAS was inadequate.

37. The Chairman concluded that after the implementation of the legislative proposals, the Panel should further discuss with the legal profession on relevant issues including other proposals not supported by the Administration, with a view to mapping out the way forward for the next term of LegCo to follow up.

**VI. Any other business**

38. There being no other business, the meeting ended at 4:35pm.