

立法會
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by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 16 December 2013, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex

Members present : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)
Hon Dennis KWOK (Deputy Chairman)
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, GBS, JP
Hon Starry LEE Wai-king, JP
Hon CHAN Kin-por, BBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Michael TIEN Puk-sun, BBS, JP
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, JP
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen

Member attending : Hon CHAN Chi-chuen

Members : Hon Ronny TONG Ka-wah, SC
Absent Hon WONG Yuk-man
Hon Alice MAK Mei-kuen, JP
Hon TANG Ka-piu

Public Officers : Item III
attending

Department of Justice

Mr Peter WONG
Deputy Solicitor General (General)

Item IV

Department of Justice

Ms Adeline WAN
Senior Assistant Solicitor General

Ms Anthea LI
Senior Government Counsel

Ms Anita NG
Senior Government Counsel

Ms Karmen KWOK
Senior Government Counsel

Ms Ida CHAN
Senior Government Counsel

Security Bureau

Mrs Millie NG KIANG Mei-nei
Principal Assistant Secretary (Security)E

Ms Alice YEUNG Lai-shan
Assistant Secretary (Security) E2

Constitutional and Mainland Affairs Bureau

Mr D C CHEUNG
Principal Assistant Secretary (Constitutional and
Mainland Affairs)5

Mr Michael YAU
Assistant Secretary (Constitutional and Mainland
Affairs)5A

Judiciary Administration

Ms Wendy CHEUNG
Assistant Judiciary Administrator (Development)

Commerce and Economic Development Bureau

Mr Ivanhoe CHANG
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)B

Mr Daniel FONG
Assistant Secretary for Commerce and Economic
Development (Commerce and Industry) Special
Duties 1

Office of the Communications Authority

Mr CHENG Chi-keung
Chief Telecommunications Engineer (Development)

Home Affairs Department

Miss Linda LEUNG
Assistant Director of Home Affairs (5)

Mr Indiana WONG
Senior Administrative Officer (5)

Item V

Miss Emma LAU
Judiciary Administrator

Mr Arthur NG
Deputy Judiciary Administrator (Operations)

Mrs Angela LO
Assistant Judiciary Administrator (Corporate Services)

Attendance by : Item III
invitation

Hong Kong Bar Association

Mr Edward CHAN, SC

The Law Society of Hong Kong

Mr Dieter YIH
Immediate Past President

Mr Stephen HUNG
Vice President and Chairman of the Working Party on
Common Entrance Examination

Ms Heidi CHU
Secretary General

Ms Vivien LEE
Director of Standards & Development

Faculty of Law, The University of Hong Kong

Professor Johannes CHAN
Dean, Faculty of Law

Mr Malcolm MERRY
Head, Department of Professional Legal Education

Ms Vivian WONG
Senior Assistant Registrar, Faculty Secretary

Faculty of Law, The Chinese University of Hong Kong

Professor Christopher GANE
Dean, Faculty of Law

Mr Richard MORRIS
Director of the PCLL Programme

Mr Matthew CHEUNG
Deputy Director of the PCLL Programme

School of Law, City University of Hong Kong

Professor LIN Feng
Acting Dean, School of Law

Ms Sushma SHARMA
Senior Teaching Fellow

Mr Jack BURKE
Senior Teaching Fellow

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (4) 4

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Mr KWONG Kam-fai
Senior Council Secretary (4) 4

Ms Rebecca LEE
Council Secretary (4)2

Ms Sandy HAU
Legislative Assistant (4) 3

Ms Mandy WAN
Administrative Assistant (4)1

I. Information paper(s) issued since the last meeting

(LC Paper No. CB(4)219/13-14(01) -- Letter dated 5 December 2013 from Standing Committee on Legal Education and Training informing the Panel of its recent decision to conduct a comprehensive study of the legal education and training in Hong Kong)

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Members noted the above paper issued since the last meeting.

2. The Chairman informed members that the Panel had also invited the Standing Committee on Legal Education and Training ("the Standing Committee") to attend the meeting in connection with agenda item III. Subsequently, the Chairman of the Standing Committee wrote to the Panel explaining that it would not attend the meeting. However, it had provided some background information on its comprehensive study on legal education and training in Hong Kong to be conducted soon.

II. Items for discussion at the next meeting

(LC Paper No. CB(4)225/13-14(01) -- List of outstanding items for discussion

LC Paper No. CB(4)225/13-14(02) -- List of follow-up actions)

3. The Chairman informed members that the Administration had proposed to discuss the following items at the next regular meeting to be held on 28 January 2014 at 4:30 pm –

- (a) Briefing on the Chief Executive's 2014 Policy Address; and
- (b) Administration of Justice (Miscellaneous Provisions) Bill.

To allow sufficient time for discussion at the next meeting, the Chairman advised that duration of the next meeting would be extended to 7:00 pm. Members noted and raised no objection.

III. The Law Society of Hong Kong's proposal to introduce a common entrance examination in Hong Kong

(LC Paper No. CB(4)225/13-14(03)-- Paper provided by The Law Society of Hong Kong

LC Paper No. CB(4)234/13-14(01) -- Joint submission from the Faculty of Law of The University of Hong Kong, Faculty of Law of The Chinese University of Hong Kong and School of Law of City University of Hong Kong)

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4. The Chairman welcomed the representatives of the Law Society of Hong Kong ("the Law Society"), the Hong Kong Bar Association ("the Bar Association"), the Faculty of Law of the University of Hong Kong ("HKU"), the Faculty of Law of the Chinese University of Hong Kong ("CUHK"), the School of Law of City University of Hong Kong ("CityU") and the Administration to the meeting.

Declaration of interest

5. The Chairman declared that she taught law courses (but not courses on Postgraduate Certificate in Laws ("PCLL")) at the School of Law of CityU. Mr Abraham SHEK declared that he was a law student at CityU but he had temporarily ceased his study. He further declared interest as the representative of Legislative Council Members sitting on the Court of HKU. He and Mr Martin LIAO also declared that they were members of the Council of HKU.

Briefing by the Law Society

6. At the invitation of the Chairman, Mr Dieter YIH of the Law Society introduced the Law Society's consultation on the feasibility of implementing a common entrance examination ("CEE") as a means of admitting individuals to practise as solicitors in Hong Kong, details of which were set out in the Law Society's submission [LC Paper No. CB(4)225/13-14(03)].

7. Mr Dieter YIH said that currently, entrants to the solicitors' profession comprised different categories of law graduates who had been examined by different examinations and tested by different standards. The Law Society, as the professional regulator for solicitors in Hong Kong, did not administer the admission of most of the entrants to the profession. At present, the three law schools in Hong Kong ran their self-accredited PCLL programmes subject to the benchmarks issued by the Law Society and the Bar Association. They had the autonomy to admit students and conduct their own PCLL examinations. The Law Society had considered it increasingly important to ensure that solicitors possessed the necessary professional knowledge and skills, as well as to maintain consistency in the assessments and standards of entrants to the solicitors' profession. Mr YIH stressed that it was not the intention of the Law Society to abolish or replace the existing PCLL programmes by the proposed CEE, nor to create an additional hurdle for entry to the legal profession.

Views of the Bar Association

8. Mr Edward CHAN of the Bar Association referred to the submission from the Bar Association [LC Paper No. CB(4)257/13-14(01)] tabled at the

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meeting]. The Bar Association considered that the Law Society's proposal had not stated clearly whether the CEE would be taken before or after the trainee contract and whether PCLL programmes would still be compulsory for candidates who took the CEE. Given that the PCLL qualification was currently a prerequisite for professional admission for both solicitors and barristers, the Bar Association was concerned about the implications of the proposed CEE on the barrister branch of the profession.

Views of the three law schools

9. Professor Johannes CHAN of HKU presented the joint submission from the Faculty of Law of HKU, Faculty of Law of CUHK and School of Law of CityU [LC Paper No. CB(4)234/13-14(01)]. The three law schools were not convinced that there were justifications to introduce a CEE which was a major change to the existing system. While it might be possible for candidates to take CEE through self-study, the practical and skills-based training in the PCLL programmes could unlikely be acquired through self-study. The PCLL programmes had been run for years and the law schools were not aware of any major criticism on the quality of the programmes. The three law schools would welcome suggestions for improvement to the existing programmes, and were pleased to note the Law Society's confirmation that the proposed CEE was not meant to replace the PCLL programmes.

10. Noting the argument that PCLL had become a bottleneck for admission to the legal profession, Professor Johannes CHAN pointed out that admission to the PCLL programmes was based on academic merits of the applicants and the admission requirements set by the profession. Referring to the admission figures set out in the Annex of the joint submission, he highlighted that in the past two years, the three law schools together had admitted a total of about 650 students to the PCLL programmes each year. The admission rate at about 50% was comparable to that of other jurisdictions and was by no means unduly restrictive. Where justifiable, the three law schools would be prepared to consider increasing the PCLL places. On concerns that applicants who had failed once to get admitted to the PCLL programme would not have a second chance for admission due to keen competition, the three law schools considered that this concern could be addressed under the existing system. For example, in 2014-2015, HKU would designate some places for this group of applicants by taking into account other factors such as their working experience. Professor CHAN further said that as the Standing Committee would conduct a comprehensive review on legal education and training, it was undesirable to contemplate any major changes in the interim which might pre-empt the review.

11. Professor Christopher GANE of CUHK considered that the concerns intended to be addressed by the proposed CEE were far from clear. At present,

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a proper mechanism was in place to ensure the quality of the PCLL programmes. On the bottleneck issue, consideration might be given to increasing the number of PCLL places subject to the availability of funding from the University Grants Committee or by offering self-financing programmes. He nevertheless pointed out that a bottleneck would still prevail if the legal profession could not offer sufficient trainee contracts for the PCLL graduates.

12. Professor LIN Feng of CityU stressed that the introduction of a CEE as proposed by the Law Society would be a fundamental change to the current system. A consensus should first be reached among stakeholders on the need, if any, for such a change. He said that the Standing Committee would be the proper forum to consider this matter because all the stakeholders were represented on the Standing Committee.

Views of the Administration

13. Deputy Solicitor General (General) ("DSG") said that as the Standing Committee had not yet had a chance to discuss the Law Society's proposal on introducing a CEE, the Administration would continue to listen to the views of all stakeholders in relation to the proposal before taking a more definitive view on it. As the membership of the Standing Committee included representatives from the Law Society, Bar Association, the three law schools, Judiciary, Department of Justice, Education Bureau and lay persons, the Administration considered that the Standing Committee would be the appropriate forum for stakeholders to study this matter and to formulate the direction for the development of legal education and training in Hong Kong.

Discussion

Routes of entry into the legal profession in Hong Kong

14. Mr Tony TSE said that in Hong Kong, common qualification examinations were administered by a number of professional bodies for professional admission. Noting from the three law schools that the PCLL programmes had all along operated smoothly, he sought further explanation from the Law Society on the reasons for proposing CEE.

15. Mr Dieter YIH explained that changes had taken place in the last decade or so. For instance, the number of PCLL course providers had increased, applicants for PCLL programmes were in possession of more diversified qualifications, the services provided by solicitors had widened in scope, there was growing presence of foreign lawyers and law firms in Hong Kong. Against this background, the Law Society considered it appropriate to explore the feasibility of introducing a CEE.

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16. Mr CHAN Kam-lam enquired about details of the operation of the proposed CEE and the standard of assessments for local and non-local candidates. In this regard, Mr Dieter YIH advised that foreign lawyers who had been admitted to practice in overseas countries and who intended to practise in Hong Kong would take the Overseas Lawyers Qualification Examination ("OLQE") administered by the Law Society. The vast majority of local applicants holding local or non-local qualifications were required to take the PCLL programmes offered by the three law schools and pass the PCLL examination held by the respective law school. Since consultation was in progress, details of the operation and assessment standard of the proposed CEE were yet to be worked out. The Law Society envisaged that the introduction of a common examination would bring about consistency in assessments and standards for all candidates seeking admission to the profession.

17. Regarding OLQE, Mr Dennis KWOK requested the Law Society to provide the following statistical information covering the past five years –

- (a) a breakdown by year on the number of candidates taking OLQE;
- (b) a breakdown by year on the number of candidates who passed OLQE;
- (c) a breakdown by year on the number of applications for exemption in respect of each of the five OLQE "Heads";
- (d) out of (c) above, a breakdown by year on the number of exemptions granted in respect of each of the five OLQE "Heads"; and
- (e) out of (c) above, a breakdown by year on the number of "automatic" exemptions granted, if any, in respect of each of the five OLQE "Heads".

Mr Dieter YIH agreed to follow up on the relevant statistics after the meeting.

(Post-meeting note: The Law Society's written information was circulated to members vide LC Paper No. CB(4)399/13-14(01) on 14 February 2014.)

18. Mr Dennis KWOK remarked that the study programmes and examination for preparing law graduates to qualify for professional admission should not differ between the solicitor and barrister branches of the legal profession, as a solicitor might later decide to qualify as a barrister and vice versa. He considered it necessary for the Law Society to consult the Bar Association on the feasibility of the proposed CEE. In this regard, Mr Stephen HUNG of the

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Law Society said that the proposed CEE would not affect the entry to the barrister branch of the profession as it was not proposed to abolish the PCLL qualification.

19. Mr Albert HO remarked that currently, graduates who failed to get admitted to PCLL programmes because they had not attained a high 2:2 in a qualifying law degree would unlikely succeed in any second attempt to apply for admission to PCLL programmes. In some other cases, the graduates might need to take up a full-time job and could not afford to study full-time PCLL programmes. In this regard, Mr HO considered that a public examination such as the proposed CEE might provide an alternative route of entry to the legal profession. In his view, a public examination in which the examination scripts were marked anonymously would ensure greater fairness than PCLL examinations conducted within the universities.

20. Mr Paul TSE said that in England, students might be eligible for admission to the legal profession by either securing the required qualifications from law schools or passing the Common Professional Examination. The proposed CEE might provide an additional route for young people to pursue a career in the legal profession in Hong Kong.

21. Mr James TO was of the view that consideration might be given to maintaining the PCLL programmes and implementing CEE as an additional route of entry to the legal profession. The total number of graduates qualifying under the PCLL examinations and CEE should be consistent with the manpower demand of the legal profession. The Chairman considered that it would be worthwhile to explore alternative routes for young people to join the legal profession.

22. Mr Stephen HUNG of the Law Society said that the current consultation exercise aimed to collect the views of stakeholders and the public on the idea of introducing a CEE. He reiterated that it was not the intention of the Law Society to replace the PCLL programmes with CEE. The proposed CEE might also provide a second chance for students who failed in the PCLL examinations to attain a qualification for entrance to the legal profession.

23. Mr Edward CHAN said that in the absence of sufficient details on the operation of the proposed CEE, it was difficult for the Bar Association to formulate any concrete comment for the time being. Noting that CEE might be conducted in parallel to the existing PCLL examinations, Mr CHAN pointed out that consideration should be given to whether candidates would be required to take any courses to prepare for the proposed CEE.

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24. Professor Johannes CHAN remarked that there might have been greater concern about the quality of solicitors in Hong Kong in the past when the qualifications required for entry to the legal profession were not as stringent as the prevailing requirements. At present, a law degree and PCLL qualification were required for admission to the profession. According to the benchmarks set by the Law Society, applicants admitted to the PCLL programmes should attain a minimum of a high 2:2 standard in their law qualification or equivalent. Professor CHAN was concerned whether the proposed CEE, if implemented, would lead to the lowering of these qualification requirements.

Issues related to existing PCLL programmes

25. Some members, including Mr CHAN Kam-lam, Mr Tony TSE and Mr Dennis Kwok, were concerned whether PCLL had become a bottleneck for admission to the legal profession.

26. Mr Dieter YIH said that the proposal of introducing a CEE was not driven by the need to address any bottleneck situation arising from the limited number of PCLL places. Regarding the suggestion of increasing the number of PCLL places at the three law schools or allowing more PCLL course providers, the Law Society was concerned that it might not have the sufficient capacity to monitor the quality and delivery of additional PCLL programmes. If it was decided to increase PCLL course providers, amendments to the relevant legislation would be required.

27. Professor Johannes CHAN said that there had been anecdotal evidence that it was difficult to get admitted to the existing PCLL programmes. He reiterated that admission to the PCLL programmes was decided by merits on a competitive basis and according to the benchmark standards set by the profession. Regarding any difficulty in monitoring the teaching materials and the delivery of the PCLL programmes, Professor CHAN indicated that consideration might be given to modifying the monitoring methodology with reference to the experience of other jurisdictions. For instance, instead of adopting an annual monitoring, a periodic but intensive monitoring every few years might be adopted. Consideration might also be given to setting up a dedicated unit for this purpose with full-time staff rather than relying on existing practitioners.

28. Mr Abraham SHEK shared with the meeting some statistical information provided by the Education Bureau ("EDB") in response to a question raised by him at the Council meeting of 23 October 2013 regarding the PCLL programmes offered by the three law schools in Hong Kong. According to EDB's information, 44% of applications based on local law qualifications were admitted to PCLL programmes in the 2011-2012 school year. At the same time,

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43% of applications based on non-local law qualifications were admitted. Mr SHEK suggested that a copy of EDB's reply to his question should be forwarded to the relevant parties for information.

(Post-meeting note: A copy of the question raised by Mr Abraham SHEK at the Council meeting of 23 October 2013 on the Postgraduate Certificate in Laws programmes offered by universities and the Administration's reply thereto was sent to the Bar Association, the Law Society, Faculty of Law of HKU, Faculty of Law of CUHK and School of Law of CityU respectively on 17 December 2013 for information.)

29. Mr Abraham SHEK was concerned that students with local law qualifications would be disadvantaged by the admission of a comparable proportion of students with non-local qualifications. He remarked that due to limited places, many otherwise qualified candidates were unable to get admitted to PCLL programmes and hence, denied access to the legal profession; while an increasing number of foreign lawyers were admitted to professional practice in Hong Kong. The proposed CEE could serve as an alternative route of entry to the profession. He remarked that the three law schools were not supportive of the Law Society's proposal probably because of the need to protect their vested interest. Mr SHEK said that the Administration should explore the feasibility of increasing the number of PCLL programme providers, such as allowing other UGC-funded institutes to offer PCLL programmes.

30. On admission to PCLL programmes, Professor Johannes CHAN said that applicants could not get admitted to PCLL programmes mainly because they had not fulfilled the minimum admission requirements set by the profession. If certain eligibility criteria were specified for taking the proposed CEE, there would still be candidates who could not sit for the examination because they could not meet these criteria.

31. Professor Christopher GANE advised that according to the statistics of CUHK for the 2013-2014 school year, only 15% of the students admitted to PCLL programme held non-local qualifications while 85% of the students admitted were local graduates. He further said that while PCLL programmes could break even, they did not bring about huge income to the universities.

32. Professor LIN Feng said that the admission of non-local students by individual universities was related to the internationalization policy for the higher education sector. In this regard, Mr Abraham SHEK said that his concern was the admission of local candidates holding non-local qualifications to the PCLL programmes. Currently, the admission of non-local students to UGC-funded institutions was already subject to a cap, i.e. 20% of the approved places.

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33. Mr Paul TSE said that according to his understanding, the curriculum of the prevailing PCLL programmes appeared to be an extension of the LLB degree programme, and primarily focused on academic aspects rather than practical training. In this regard, Professor Christopher GANE said that the academic components of PCLL programmes were rolled back to the LLB programme to make room for more practice training. The PCLL programmes were skills-based to prepare law graduates to embark on further traineeship.

34. Mr Dennis KWOK remarked that if the quality of PCLL graduates was an issue of concern, the Law Society should work in collaboration with the law schools to enhance the standard of the PCLL programmes.

35. Mr Dieter YIH clarified that the Law Society was not questioning the quality of the entrants to the solicitors' profession holding PCLL qualification, but was concerned about the inconsistency in standards among the PCLL examinations of the three law schools. Mr Stephen HUNG supplemented that the crux of the matter was that students of the three law schools were tested by different examinations and standards. The proposal to introduce a CEE would enable students from different universities to compete fairly in a single examination.

36. In this connection, Mr CHAN Kam-lam said that the three law schools and the two professional bodies might consider the feasibility of requiring the PCLL students of the three law schools to be assessed by a common examination. The Chairman enquired whether it was feasible to increase the number of PCLL places and introduce a CEE in parallel.

37. Professor Johannes CHAN said that the main issues to be tackled by the proposed CEE should be identified before further deliberations. Professor LIN Feng said that the law schools were open to any views for the improvement of the PCLL programmes. However, he considered that the justifications for introducing the proposed CEE were not clear and convincing.

Comprehensive review to be conducted by the Standing Committee

38. Mr Martin LIAO expressed his disappointment as he considered that the views presented by various parties had not demonstrated in what way public interest could be served by their proposals. He said that the Standing Committee would be the appropriate platform to deliberate on issues like the proposed CEE, and sought information, if any, on the progress and timetable for the comprehensive review in question.

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39. Professor Johannes CHAN advised that the Standing Committee had met recently and agreed on the terms of reference of the panel responsible for the review. The Standing Committee also had a preliminary discussion on the composition of the review panel, the engagement of consultant and the possible source of funding for conducting the review. Professor Christopher GANE said that as he understood, no timetable had yet been worked out for the review. As the representative of the Bar Association on the Standing Committee, Mr Edward CHAN said that the Standing Committee was exploring the source of funding for the review as government funding might not be available.

40. DSG informed members that the Standing Committee had been exploring the feasibility of making use of the resources of the company that currently administered the PCLL Conversion Examination. Nevertheless, the possibility of government funding had not been ruled out. DSG stressed that the Administration had all along attached great importance to legal education and training in Hong Kong. Whilst the Administration was open as to whether there should be a CEE, it was aware that a number of issues would need to be examined, including the justifications for the proposed CEE, its relationship, if any, with the existing PCLL programmes.

41. The Chairman sought the views of the attending deputations on the six areas under the terms of reference of the Standing Committee's comprehensive review. Mr Dieter YIH said that since different stakeholders were represented on the Standing Committee, the terms of reference formulated by the Standing Committee after careful deliberation should be comprehensive and acceptable to the stakeholders.

The way forward

42. Noting that the consultants to be engaged by the Law Society would prepare a report upon completion of the consultation on the feasibility of implementing a CEE in Hong Kong, Mr Dennis KWOK enquired whether it would be feasible for the Law Society to provide the draft of the report to this Panel and other stakeholders for discussion before finalizing the findings and recommendations. Mr Paul TSE expressed his reservation on Mr KWOK's suggestion. Instead, he suggested that if practicable, the Panel might arrange a meeting to receive views from stakeholders and members of the public, such as those who could not get admitted to PCLL programmes. Mr CHAN Kam-lam concurred with Mr Paul TSE's suggestion.

43. Concluding the discussion, the Chairman remarked that the Panel would keep in view the progress of the Law Society's consultation exercise and the Standing Committee's comprehensive review, and would re-visit this subject in due course.

IV. Statute Law (Miscellaneous Provisions) Bill

(LC Paper No. CB(4)225/13-14(04) -- Paper provided by the Administration)

Briefing by the Administration

44. At the invitation of the Chairman, Senior Assistant Solicitor General ("SASG") briefed members on the proposed amendments under the Statute Law (Miscellaneous Provisions) Bill 2014 as set out in the Administration's paper [LC Paper No. CB(4)225/13-14(04)]. She said that the Bill was an omnibus bill proposing miscellaneous amendments to update or improve existing legislation, and indicated that the proposed amendments were largely technical and non-controversial.

Discussion

Crimes Ordinance (Cap. 200)

45. Mr CHAN Chi-chuen considered that the Administration should have taken timely action to amend the unconstitutional provisions (i.e. sections 118C, 118H, 118F(2)(a) and 118J(2)(a)) of the Crimes Ordinance immediately after the court had handed down its judgment in *Leung TC William Roy v S for J* [2006] 4 HKLRD 211 and *Secretary for Justice v Yau Yuk Lung Zigo and Another; FACC 12/2006*. Notwithstanding that the aforesaid provisions had been ruled unconstitutional in 2006 and should henceforth cease to have legislative effect, Mr CHAN noted with concern that many homosexual persons were under the impression that as long as the relevant legislation remained unchanged, it was unlawful for homosexual men below the age of 21 to engage in buggery. He further pointed out that according to his understanding, many frontline police officers shared the same misconception. Mr CHAN was therefore gravely concerned whether any homosexual persons below the age of 21 had been wrongly arrested or prosecuted in this regard since 2006.

46. Principal Assistant Secretary (Security) ("PAS(S)") confirmed that after the courts' rulings in 2005 and 2006 that sections 118C and 118H and sections 118F(2)(a) and 118J(2)(a) of the Crimes Ordinance were unconstitutional, no prosecution had been taken against any person under the aforesaid provisions. Frontline police officers had been reminded that the provisions concerned had no legal effect after the courts' rulings and they should not take enforcement action based on these provisions.

47. Noting that the proposed amendments to the Crimes Ordinance (i.e. sections 118C, 118H, 118F(2)(a) and 118J(2)(a)) only sought to deal with the

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minimum permissible age for men to engage in homosexual buggery, Mr CHAN Chi-chuen expressed disappointment that the Administration had not introduced similar legislative amendments for women engaged in same-sex sexual activity. He also pointed out that the penalty applicable to persons who had committed an offence of homosexual buggery was more severe than those who had committed unlawful intercourse with girls. Mr CHAN was of the view that the penalties for both offences should be aligned, and urged the Administration to take early action to amend the relevant legislation.

48. In this regard, PAS(S) pointed out that in July 2006, in response to the request of the Secretary for Justice and the Chief Justice ("CJ"), the Law Reform Commission ("LRC") had set up a Subcommittee to review the law relating to sexual and related offences in Hong Kong ("the Subcommittee"). The Subcommittee had adopted a number of guiding principles in conducting the review, namely clarity of the law, respect for sexual autonomy, the protective principle, gender neutrality, avoidance of distinctions based on sexual orientation, and adherence to the Human Rights laws and practices guaranteed under the Basic Law. In line with the established practice, the LRC would engage the public in the law reform process by public consultation before it submitted its reform proposals to the Administration for consideration.

49. Concurring with Mr CHAN Chi-chuen's concern about the delay in introducing the legislative amendments, Mr LEUNG Kwok-hung enquired about the timetable for the Subcommittee's study on the law relating to sexual and related offences in Hong Kong.

50. In response, PAS(S) advised that following the establishment of the Subcommittee in July 2006, there had been public views on the imminent need to protect children from sexual abuse. As a result, the Subcommittee had spent some time in studying the establishment of an administrative scheme on sexual conviction record check and made corresponding recommendations in 2010, to which the Administration had promptly set up the Sexual Conviction Record Check Scheme in 2011. Thereafter, the Subcommittee continued its review on sexual and related offences. Given that a number of overseas jurisdictions had enacted legislation in recent years to reform their laws on sexual offences, the Subcommittee considered it necessary to study and draw reference from overseas experience before formulating its views and recommendations. PAS(S) advised that the original plan of the Administration was to introduce legislative amendments to the aforementioned provisions in a holistic manner upon completion of the LRC's review. However, in view of some requests from the legal sector, the Administration proposed to introduce legislative amendments to update the Crimes Ordinance by amending/repealing the unconstitutional provisions first. The review of provisions related to sexual offences in the Crimes Ordinance, including penalty, would be dealt with under

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the Subcommittee's comprehensive review. She undertook to relay the concern of members to the LRC on the timetable for the overall review of sexual offences.

51. Mr LEUNG Kwok-hung suggested that to expedite the introduction of legislative amendments, consideration might be given to introducing the legislative amendments by phases as and when the Subcommittee completed its study on a specific matter, instead of until the completion of the entire review.

52. PAS(S) explained that given the wide scope of the review and the sensitive and controversial issues which required careful study, it was envisaged that reasonable time was required for completion of the review. The Subcommittee had decided to take forward the overall review under four parts and to issue separate consultation papers and reports on specific aspects of the subject. She understood that in September 2012, the LRC had issued the first consultation paper which covered the non-consensual sexual offences concerning the promotion and protection of a person's sexual autonomy. The Panel had also been consulted in December 2012. According to the plan of the LRC, the second consultation paper would cover offences based on the protective principle (e.g. offences against children and mentally incapacitated persons and offences involving abuse of a position of trust as well as issues related to the age of consent).

Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (94 of 1997) ("the 1997 Ordinance")

53. Dr CHIANG Lai-wan did not consider that the proposed amendments to the definition of "legal practice entities" referred to in Schedule 1 to the 1997 Ordinance were merely technical and non-controversial, and should therefore be included in the omnibus bill. In her view, the relevant stakeholders, including solicitors and foreign lawyers, should be consulted as the proposed legislative amendments might have a great impact on their operation.

54. In response, SASG explained that the proposed legislative amendments should not have any adverse effect on the mode of operation of any practising solicitors, foreign lawyers or their law firms despite the fact that the Council of the Law Society had resolved to reinstate the law prior to the 1997 Ordinance, namely, only solicitors or foreign lawyers could become trustees or co-trustees of a trust. It should be noted that as Schedule 1 to the 1997 Ordinance had not yet come into operation, only solicitors or foreign lawyers could be trustees or co-trustees of a trust under the existing provisions of the Legal Practitioners Ordinance (Cap. 159) ("LPO").

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Legal Practitioners Ordinance (Cap. 159)

55. Mr Paul TSE enquired whether the proposed amendments to section 8A of the LPO were to deal with the revocation and restoration of a suspension of a solicitor's practice or a foreign lawyer's registration only in the circumstance when his financial position was at stake.

56. Ms Karmen KWOK, Senior Government Counsel of the Department of Justice ("DoJ"), supplemented that as informed by the Law Society, the Council of the Law Society might, in deciding whether to exercise the power to suspend a solicitor from practice or a foreign lawyer from registration pending a decision of the Solicitors Disciplinary Tribunal, take into account factors such as conviction of a solicitor or foreign lawyer for an offence for which a sentence of imprisonment was possible and section 8A of the LPO was a wide provision. The Law Society considered it necessary that the Council of the Law Society be empowered with the discretion to revoke and restore a suspension of a solicitor's practice or a foreign lawyer's registration in the circumstance that the solicitor/foreign lawyer's application for appeal to the Solicitors Disciplinary Tribunal was being processed having considered the many different scenarios covered by section 8A. According to the Law Society, there was similar arrangement in the United Kingdom and thus it might worth exploring to include a similar provision in Hong Kong.

57. In the light of public interest, Mr Paul TSE asked whether the Administration had any plan to review the appropriateness or otherwise of the existing practice of the Solicitors Disciplinary Tribunal to convene closed-door disciplinary hearings.

58. In this regard, SASG advised that in the regulation of the legal practitioners, it had been the standing policy of the Administration to promote self governance by the two legal professional bodies. It also noted that the Solicitors Disciplinary Tribunal's decisions were subject to appeal to the Court of Appeal. For the time being, the Administration had no plan to review the related statutory provisions.

Conclusion

59. Noting the proposed amendments included under the omnibus bill, the Chairman remarked that the Administration should avoid bundling too many discrete issues into a single omnibus bill. Summing up the discussion, the Chairman said that the Panel supported the introduction of the Bill into the Legislative Council.

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V. Judicial manpower situation at various levels of court and long court waiting times

(LC Paper No. CB(4)225/13-14(05) -- Paper provided by the Judiciary Administration

LC Paper No. CB(4)225/13-14(06) -- Background brief on "Judicial manpower situation at various levels of court and long court waiting times" prepared by the Legislative Council Secretariat)

Briefing by the Judiciary Administration

60. At the invitation of the Chairman, Judiciary Administrator ("JA") briefed members on the judicial manpower situation at various levels of court and court waiting times, details of which were set out in the Judiciary Administration's paper [LC Paper No. CB(4)225/13-14(05)].

Discussion

Judicial manpower requirements

61. Referring to the establishment, strength and vacancy of Judges and Judicial Officers ("JJOs") set out in Enclosure I of the Judiciary Administration's paper, Mr Michael TIEN noted with concern that as at 1 December 2013, there were 34 vacancies at various levels of court, which was about 17% of the total 193 JJO establishment posts. He enquired whether the Judiciary had encountered any special difficulties in its latest recruitment and in attracting outside talents to join the Bench.

62. JA advised that the last round of recruitment exercises, which started during the period from June 2011 to July 2012, had been completed. So far, 49 judicial appointments had been made through selection by open recruitment. Of the 49 appointees, 20 were from outside the Judiciary. JA also informed members that for judges at the District Court level and above, they were required to give an undertaking that they would not return to private practice in Hong Kong without the permission of the Chief Executive ("the CE"). No such permission had been granted by the CE over the years.

63. Responding to the Chairman's enquiry about measures for attracting outside talents including the solicitors to join the Judiciary, JA said that as solicitors were now eligible for higher rights of audience, this would be conducive to expanding the pool of potential candidates in the longer run.

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64. Dr CHIANG Lai-wan enquired about the number of newly appointed JJOs who were practitioners with experience in litigation, and whether the addition of judicial resources had resulted in an improvement in court waiting times for civil appeal cases heard by the Court of Appeal of the High Court ("the CA").

65. JA informed members that as at 31 March 2013, 27 out of 45 new JJOs had been appointed from outside the Judiciary. They comprised 23 barristers and four solicitors with practising experience in litigation. She further advised that as an interim measure to improve court waiting times, Judges had been redeployed from the Court of First Instance of the High Court ("the CFI") to hear cases at the CA. The Chief Judge of the High Court ("CJHC") had also given instruction to accord a higher priority to criminal appeal cases heard by the CA.

Court waiting times

66. Dr CHIANG Lai-wan expressed concern about the long court waiting times at various levels of court. She said that she was aware of cases in which the appellants could only have their cases heard after they had served their imprisonment sentence.

67. In this connection, JA explained that as revealed in the establishment reviews conducted by the Judiciary, the High Court ("HC") remained a pressure area. It was necessary to provide additional judicial resources to the CFI in the light of its increased caseload and the growing complexity of the cases heard. At present, the Court Leader, i.e. CJHC, had the discretion to assign cases to the JJOs having regard to the complexity of the cases and the amount of preparatory work required. Where necessary, the JJOs concerned could discuss with the Court Leader for the provision of time to cope with increased workload and other special circumstances.

68. As regards the Chairman's concern about the long court waiting times for civil appeal cases, JA advised that at present, CJHC had instructed that where practicable, priority would normally be given to judicial review cases and cases which involved applications for injunctions. It was hoped that when the substantive vacancies were filled in due course, the pressure on lengthened waiting times could be relieved.

69. Noting from Enclosure II of the Judiciary Administration's paper that during the years 2010 to 2012, the Lands Tribunal had consistently achieved a good performance in meeting the average waiting time target, Mr Paul TSE

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enquired about the feasibility of redeploying some of the judicial resources of the Lands Tribunal to other levels of court.

70. In this regard, JA advised that the relatively short average waiting time of the Lands Tribunal was mainly due to the fact that the total caseload of the Lands Tribunal had been lower than expected over the past few years. The Judiciary had kept under constant review its judicial establishment and manpower situation having regard to operational needs, including the need to keep court waiting times within targets. The Judiciary expected to be in a position to inform the Panel of the relevant details in the context of the draft Estimates of Expenditure for 2014-2015.

71. Referring to the staffing position as at 1 December 2013, Mr Paul TSE enquired whether there was an excess of eight Judges on the establishment of District Courts. In response, JA explained that in line with the established practice, the Judiciary had ceased the appointment of Deputy Registrars for the High Court Masters' Office, the duties of which were taken up through re-deployment of District Judges under the cross-posting policy of the Judiciary. She drew members' attention to the nine vacancies of the High Court Masters' Office and confirmed that eight District Judges had been posted to take up the duties of the High Court Masters' Office, resulting in only one net vacancy in the High Court Masters' Office.

Courtrooms and office accommodation

72. Ms Emily LAU recalled that during the Panel's visit to the Judiciary on 3 December 2013, some members had raised with CJ their concern about the persistent shortage of judicial manpower, as well as the under-provision of courtrooms and office accommodation. She said that she had reiterated these concerns for the Administration's consideration at a recent meeting of the Public Works Subcommittee. Ms LAU urged the Judiciary to put up requests for resource requirements early in order that the provision of new courtrooms and office accommodation could tie in with the additional judicial manpower. Mr Dennis KWOK and Mr LEUNG Kwok-hung shared similar concerns. Mr KWOK also stressed the importance of sufficient judicial resources for the operation of an independent and effective judicial system.

73. Whilst noting that the new West Kowloon Law Courts Building scheduled for completion in 2016 could help relieve the shortage of courtrooms and office accommodation for the Judiciary, Mr Dennis KWOK enquired whether the Judiciary would make proactive planning in the provision of courtrooms and office space in anticipation of the addition of seven Judges for CFI. Specifically, Mr KWOK asked whether consideration would be given to relocating HC or carrying out in-situ expansion.

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74. JA responded that as a result of the refurbishment of the LG4th floor of the HC, three additional courtrooms had been provided. For those fillable vacancies at HC, office space had been earmarked for the provision of chambers for JJOs and offices for their supporting staff. Under the direction of CJ, the Judiciary would keep its resource requirements under constant review and, where appropriate, put up proposals to the Administration in accordance with the budgetary arrangements agreed between the Judiciary and the Administration.

75. In reply to Mr Michael TIEN's enquiry about the progress in the setting up of the Competition Tribunal, JA advised that additional posts of JJOs and supporting staff had been created while the office accommodation requirement had been submitted to the Administration for consideration.

76. Ms Emily LAU suggested that the Panel might wish to follow up with the Administration the progress of providing adequate accommodation for the effective operation of the Judiciary at a future meeting.

The Scheme of Judicial Assistants

77. Mr Michael TIEN did not consider the deployment of temporary judicial manpower a long-term solution for meeting the manpower requirements of the Judiciary, and urged the Judiciary to come up with other measures to attract outside talents to join the Judiciary.

78. Mr Paul TSE noted from paragraphs 17 to 18 of the Judiciary Administration's paper that 57 of the 126 persons who had sat as external deputy/temporary JJOs in the past 35 months (i.e. from 1 January 2011 to 30 November 2013) were no longer serving as deputy/temporary JJOs. He commented that this might indicate that serving as deputy/temporary JJOs might not have provided outside practitioners with useful judicial experience and attracted them to continue to serve in the Judiciary. Mr TSE then enquired about the effectiveness or otherwise of the Scheme of Judicial Assistants ("the Scheme") as a measure to encourage new entrants to the Judiciary.

79. Mr Dennis KWOK was of the view that the Scheme was beneficial to fresh graduates holding law degrees to gain an insight into the work of the Judiciary, while providing assistance to appellate judges in the discharge of their duties. He considered it useful for the Judiciary to review the scale of the Scheme and increase the annual intake of Judicial Assistants.

80. Noting members' concern, JA explained that in line with the established practice, the Judiciary had been engaging and would continue to engage

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temporary judicial resources to help maintain the level of judicial manpower required. The engagement of internal/external deputy and temporary JJOs was one of the measures to cope with the court's workload. As regards the Scheme, its objective was to provide enhanced support to appellate judges through conducting research on law points and providing assistance in other work of the court. Notwithstanding its plan to recruit up to six Judicial Assistants each year, the Judiciary also considered that for the Scheme to operate effectively, only fresh and bright law graduates who were found suitable for the job would be appointed. During the period from 2010 to 2013, the number of Judicial Assistants recruited each year ranged from three to five.

81. Mr LEUNG Kwok-hung queried the effectiveness of the Scheme in helping to relieve the workload of appellant judges having regard to the limited experience of Judicial Assistants. He said that he was aware of a Judge having assigned Masters to deputize him in handling certain court cases. Mr LEUNG was concerned that such arrangement was ultra vires. He saw a need for the Judiciary to critically examine the prevailing workload of JJOs and, where appropriate, consider reshuffling the duties among JJOs.

82. JA reiterated that the target candidates for the Scheme were fresh and bright law graduates who were found suitable for the job. Judicial Assistants assumed a supporting role and were mainly engaged in conducting research on law points, analyzing and writing memoranda on appeals and applications, drafting memoranda on legal points and assisting other work of the court as assigned by the appellate judges. The Judges would continue to perform their judicial functions and hear cases.

Conclusion

83. Summing up the discussion, the Chairman advised that issues related to judicial manpower and courtroom facilities/office accommodation for the Judiciary would be revisited as and when appropriate.

VI. Any other business

84. Dr CHIANG Lai-wan expressed concern about the possible hardship faced by middle-class litigants who were not eligible for legal aid but who had to pay exorbitant legal costs for services provided by lawyers. The Chairman noted Dr CHIANG's concern and indicated that she would consider following up the issue with the Administration.

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85. There being no other business, the meeting ended at 7:45 pm.

Council Business Division 4
Legislative Council Secretariat
21 March 2014