

立法會
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LC Paper No. CB(4)703/14-15
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by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 26 January 2015, 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 Paul TSE Wai-chun, JP
 - Hon Alan LEONG Kah-kit, SC
 - Hon LEUNG Kwok-hung
 - Hon NG Leung-sing, SBS, JP
 - Hon Steven HO Chun-yin
 - Hon MA Fung-kwok, SBS, JP
 - Hon Alice MAK Mei-kuen, JP
 - Dr Hon Elizabeth QUAT, JP
 - Hon Martin LIAO Cheung-kong, SBS, JP
 - Dr Hon CHIANG Lai-wan, JP
- Members attending** :
- Hon WONG Kwok-hing, BBS, MH
 - Hon CHAN Chi-chuen
- Members absent** :
- Hon Ronny TONG Ka-wah, SC
 - Hon WONG Yuk-man
 - Hon TANG Ka-piu, JP
 - Hon CHUNG Kwok-pan

Public Officers : Item III
attending

Department of Justice

Mr Rimsky YUEN, SC, JP
Secretary for Justice

Mr Frank POON, JP
Solicitor General

Mr Benedict LAI, SBS, JP
Law Officer (Civil Law)

Ms Amelia LUK, JP
Law Officer (International Law)

Mr Paul WAN, JP
Law Draftsman

Mr Keith YEUNG, SC, JP
Director of Public Prosecutions

Mr CHEUK Wing-hing, JP
Director of Administration & Development

Home Affairs Bureau

Ms Florence HUI Hiu-fai, SBS, JP
Under Secretary for Home Affairs

Mr Thomas Edward KWONG, JP
Director of Legal Aid

Ms Aubrey FUNG Ngar-wai
Principal Assistant Secretary for Home Affairs (Civic
Affairs) 2

Item IV

Judiciary Administration

Mr NG Sek-hon
Deputy Judiciary Administrator (Operations)

Department of Justice

Miss Agnes CHAN
Assistant Director of Public Prosecutions

**Attendance by
invitation** : Item III

The Law Society of Hong Kong

Mr Mark Francis REEVES
Chairman of Personal Injuries Committee

Mr Kenneth FOK
Director of Practitioners Affairs Department

Item IV

Hong Kong Bar Association

Mr Andrew BRUCE, SC

**Clerk in
attendance** : Miss Mary SO
Chief Council Secretary (4)2

**Staff in
attendance** : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Cindy CHAN
Senior Council Secretary (4)2

Ms Rebecca LEE
Council Secretary (4)2

Miss Vivian YUEN
Legislative Assistant (4)2

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

LC Paper No. CB(4)387/14-15(01) -- Judiciary Administration's paper entitled "Proposed Legislative Amendments relating to the Notice of Abandonment in the Schedule to the Criminal Appeal Rules (Cap. 221 sub. leg. A)"

Members noted the above paper issued since the last meeting and did not raise any queries.

II. Items for discussion at the next meeting

LC Paper No. CB(4)367/14-15(01) -- List of outstanding items for discussion

LC Paper No. CB(4)378/14-15(01) -- Letter from Hon TANG Ka-piu dated 15 January 2015 requesting to discuss the assignments of lawyers to legally aid persons by the Legal Aid Department

LC Paper No. CB(4)367/14-15(02) -- List of follow-up actions

2. Members noted a letter dated 26 January 2015 from Mr LEUNG Kwok-hung proposing to discuss the issue of "Review of legal aid services" tabled at the meeting.

3. The Chairman suggested to combine the discussion of the issue of "Review of legal aid services" proposed by Mr LEUNG Kwok-hung and of the issue of "Assignment of lawyers to legally aided persons by the Legal Aid Department" proposed by Mr TANG Ka-piu with the discussion of the issue of "Criteria for approving legal aid applications" under Item 3 of the List of Outstanding Items for Discussion [LC Paper No. CB(4)367/14-15(01)]. Members agreed.

4. The Chairman sought members' agreement for her to approach the Chairman of the Panel on Manpower to discuss whether the following issues raised in a letter dated 19 January 2015 from the Hong Kong & Kowloon Trades Union Council ("HKKTUC") to the Panel [LC Paper No. CB(4)395/14-15(01)]

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should more appropriately be followed up by the Panel on Manpower:

- (a) failure of the Prosecutions Division of the Department of Justice ("DoJ") to meet its performance pledge to advise law enforcement agencies in relation to criminal matters within 14 working days; and to comply with its Prosecution Code to prosecute where there was legally sufficient evidence; and
- (b) penalties imposed by the Court on employers convicted of the offences under the Employment Ordinance (Cap. 57) did not reflect the seriousness of the offences.

Members agreed.

5. The Chairman said that some members requested to change the date of the next regular meeting of the Panel, originally scheduled for 23 February 2015 at 4:30 pm, to another date before the Lunar New Year. Members agreed to change the date of the regular meeting of the Panel in February 2015 and to discuss the following items in February 2015:

- (a) Draft Court Procedural Rules for the Competition Tribunal; and
- (b) Proposed amendment of the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B) and adjustment of the financial eligibility limits of the Ordinary and Supplementary Legal Aid Schemes.

[Post-meeting note: Members were informed vide LC Paper No. CB(4)430/14-15 issued on 29 January 2015 that the next meeting of the Panel was rescheduled from 23 February 2015 at 4:30 pm to 16 February 2015 at 2:30 pm.]

III. Briefing on the Chief Executive's 2015 Policy Address

LC Paper No. CB(4)367/14-15(03) -- Paper provided by the Department of Justice

LC Paper No. CB(4)367/14-15(04) -- Paper provided by the Home Affairs Bureau

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Other relevant documents

Address by the Chief Executive at the Legislative Council meeting on 14 January 2015 -- "Uphold the Rule of Law, Seize the Opportunities, Make the Right Choices, Pursue Democracy, Boost the Economy, Improve People's Livelihood"

The 2015 Policy Agenda booklet

Briefing by the Administration

6. At the invitation of the Chairman,
 - (a) Secretary for Justice ("SJ") briefed members on the policy initiatives of DoJ in 2015, details of which were set out in LC Paper No. CB(4)367/14-15(03); and
 - (b) Under Secretary for Home Affairs ("USHA") briefed members on the policy commitments in respect of legal aid and legal advice services in 2015, details of which were set out in LC Paper No. CB(4)367/14-15(04).

Discussion

Prosecutions policy

7. Mr WONG Kwok-hing urged the DoJ not to let go of persons arrested for participating in the "Occupy Central" movement lightly because of the large number of these persons involved and that some of them were famous personalities, legal practitioners and Members of the Legislative Council ("LegCo"). As the Government needed to obtain the support of a two-thirds majority of all LegCo Members on the method for selecting the Chief Executive ("CE") by universal suffrage in 2017, Mr WONG expressed concern that the DoJ would decide not to prosecute those LegCo Members who had participated in the "Occupy Central" movement.

8. SJ responded that the Prosecutions Division ("PD") of the DoJ would strictly comply with the Prosecution Code in its handling of cases arising from or related to the "Occupy Central" movement. According to paragraph 5.3 of the Prosecution Code, when considering whether to prosecute, prosecutors must consider whether there was sufficient evidence. If so satisfied, prosecutors should next consider and balance all issues of public interest. A prosecution should not be commenced or continued unless there was a reasonable prospect of conviction. SJ assured members that securing the support of LegCo

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Members in endorsing the method for selecting CE by universal suffrage in 2017 would not be a consideration for the PD of the DoJ to decide whether to or not to prosecute those LegCo Members who had participated in the occupy movement. As he and the Director of Public Prosecutions ("DPP") had made clear on numerous occasions in the past, the DoJ would treat all implicated parties equally and in accordance with the law, irrespective of their background, identity and social status.

9. Mr TAM Yiu-chung noted that the DoJ added a Public Order Events section, i.e. section 19, to its latest revised Prosecution Code released in September 2013. The section stated that as there were provisions in the Basic Law guaranteeing Hong Kong residents freedoms in respect of speech, association, assembly, procession and demonstration, etc., "[o]ffences alleged to have been committed in conjunction with the exercise of these constitutionally guaranteed freedoms may give rise to special considerations". Mr TAM hoped that prosecutors would not decide not to prosecute persons who had participated in the "Occupy Central" movement, having regard to section 19 of the Prosecution Code.

10. SJ assured members that in considering whether or not to prosecute an alleged breach of criminal law during a public order event, the DoJ would adopt the same principles as those adopted when handling other criminal cases, i.e. to consider whether there was sufficient evidence in support of the charge, and whether it was in the public interest to prosecute. The new section on Public Order Events only served to remind prosecutors of the basic legal principles applicable to the handling of cases concerning public order events in that prosecutors should strike an appropriate balance between the interest of society and maintaining public order on the one hand and the right of individuals to lawfully and peacefully exercise their constitutionally guaranteed freedoms on the other in handling cases involving public order events. In the new section on Public Order Events, references were made to the Basic Law ("BL"), the Hong Kong Bill of Rights and landmark court decisions, including the judgement delivered by the Court of Final Appeal ("CFA") in *Yeung Man-wan v HKSAR (2005) 8 HKCFAE*. Hence, there was no question of imposing new requirements on the gathering of evidence by law enforcement agencies, nor resulting in any more time spent by the Police in gathering evidence or delaying the decision to institute prosecution. SJ further said that the Prosecution Code did not prescribe any special procedures to be followed before the prosecution of cases involving public order events could be commenced. The revised Prosecution Code did not complicate or lengthen the prosecution procedures. Nor was there any need for more specific working guidelines for prosecutors in the handling of these cases.

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11. Mr TAM Yiu-chung further enquired when the PD of the DoJ would complete its work on deciding whether or not to initiate prosecution against any individuals who had been arrested for their involvement in the "Occupy Central" movement.

12. SJ responded that the DoJ had set up a small designated team of prosecutors within the PD to handle the large number of cases arising from or related to the "Occupy Central" movement, so that professional legal advice could be provided to the Police as expeditiously as possible to enable early referral of cases which merited prosecution to the courts for adjudication. The PD of the DoJ would engage, where operational needs so required, lawyers from the private sector to suitably manage its overall caseload in order that all cases could be dealt with efficiently and effectively.

13. Mr Paul TSE said that the great number of cases related to or arising from the "Occupy Central" movement would impose a heavy burden on the already heavy caseload of the Police and the DoJ, not to mention that the hearing of such cases in courts would aggravate the problem of long court waiting times. In the light of this and in order to avoid further divisions in society that emerged from the movement, Mr TSE asked whether consideration could be given to granting amnesty to those persons who were not initiators of the "Occupy Central" movement or who had not taken part in any illegal activities related to or arising from the movement.

14. SJ responded that the DoJ had considered the related laws for the granting of amnesty and concluded that the granting of such was not applicable to those people arrested for participating in the "Occupy Central" movement. The PD of the DoJ would, as always, prosecute each and every case on the basis of law, admissible evidence and public interest consideration.

15. Mr Paul TSE said that in view of the wide public concern that justice must be served in the DoJ's handling of the cases related to or arising from the "Occupy Central" movement, SJ should explain to the public the prosecutions policy on the handling of these cases at a suitable time. SJ agreed.

16. Mr Albert HO said that he was prepared to face any legal consequence for his involvement in the "Occupy Central" movement to fight for genuine universal suffrage in Hong Kong, and would decline the granting of an amnesty, if any, for his involvement in the movement.

17. Mr CHAN Kam-lam expressed opposition to the granting of amnesty to persons arrested for their involvement in the "Occupy Central" movement, as it would encourage some people to organize similar illegal activities to press the Government to do what they considered was just. Mr CHAN urged the PD of

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the DoJ to strictly adhere to the Prosecution Code in its handling of the cases related to or arising from the "Occupy Central" movement.

18. Dr Elizabeth QUAT expressed concern about whether the Police had sufficient manpower to handle cases related to or arising from the "Occupy Central" movement, as evidenced by the delay in pressing charges against persons arrested for their participation in the movement. Dr QUAT sought clarification on why some persons arrested for participating in the "Occupy Central" movement were released without charge or were allowed to be released without bail.

19. SJ responded that the Commissioner of Police had recently announced that the Police would endeavour to complete its investigation of all cases related to or arising from the "Occupy Central" movement in three months' time. On the question as to why some persons arrested for participating in the "Occupy Central" movement were released without charge or were allowed to be released without bail, DPP said that this might be due to the fact that the Police had not yet obtained sufficient evidence to lay charges on these persons within the statutory time limit. Under the existing law, the Police could only detain a person under custody for not more than 48 hours. DPP pointed out that the fact that an arrested person was released without charge or bail would not prevent the Police from arresting and laying a charge on him/her when further information/evidence came up.

20. Mr Dennis KWOK said that the former DPP had indicated in 2013 that a decision on whether or not to take prosecution action against the former CE, Mr Donald TSANG, for accepting undue favours and hospitality from business tycoons during his term in office, would be made soon. Mr KWOK enquired when the PD would make a decision on whether or not to prosecute Mr TSANG against his alleged misconduct during his term of office.

21. DPP responded that the PD had been working very closely with the Independent Commission Against Corruption ("ICAC") on the alleged misconduct of the former CE, Mr Donald TSANG, during his term of office. The ICAC had completed investigation of the case against Mr TSANG. The PD was now studying the relevant evidence and laws. A decision on whether or not to prosecute Mr TSANG should be made very soon.

Rule of law

22. Ms Emily LAU said that although the rule of law included other aspects such as upholding social justice and respecting the rights and liberty of the individual when law enforcers exercised their discretionary powers, many people in Hong Kong were concerned about the over-emphasis of the "obey the

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law" aspect of the rule of law by the Government as exemplified by SJ in his speech made at the Ceremonial Opening of the Legal Year on 12 January 2015. For instance, although civil disobedience was a well-recognized way for members of the public to pursue social justice and equal rights through non-violent means, SJ had branded involvement in the "Occupy Central" movement as illegal conduct. On the other hand, SJ had never commented on the interpretation of Annex I to the BL issued by the Standing Committee of the National People's Congress ("NPCSC") on 6 April 2004 which had resulted in the procedures for amending the method for CE election changing from a "3-Step Process" to the "5-Step Process", and on the decision issued by the NPCSC on 31 August 2014 on the 2017 CE election method which was considered by many as not complying with the international standards in relation to universal suffrage. Noting that the DoJ would embark on a "Meet the Community" programme to enhance the public's understanding of the criminal justice system (in particular that of young people), their role therein and their appreciation of the importance of the rule of law, Ms LAU queried whether this was a ploy to brainwash programme participants that rule of law was only about obeying the law and did things according to law.

23. SJ clarified that the reason why he said in his speech made at the Ceremonial Opening of the Legal Year on 12 January 2015 that "the law remains the law, and is there to be obeyed" was intended to address the recent "Occupy Central" movement and should not be taken to mean that his and the Government's view on rule of law only meant obeying the law. In fact, he had mentioned on numerous occasions in the past, including in his speech made at last year Ceremonial Opening of the Legal Year, that rule of law contained various important aspects such as upholding social justice and protecting the rights of individuals. As civil disobedience did not constitute any defence to a criminal charge, it was incumbent upon him as SJ to remind the public about the importance of obeying the law as acts of civil disobedience were potentially unlawful. On why he had not made comments on the decisions and the interpretations issued by the NPCSC, SJ said that this was because Hong Kong was constitutionally obliged to adopt any decisions and interpretations issued by the NPCSC. SJ further said that there was no question of the DoJ using the "Meet the Community" programme to brainwash participants that rule of law only meant obeying the law, as the programme was an on-going initiative launched long before the "Occupy Central" movement.

24. The Chairman said that the "Occupy Central" movement, which involved large scale as well as sporadic unlawful activities, had brought about blatant challenges to the rule of law. She did not subscribe to the saying made by one of the co-founders of the "Occupy Central" movement that surrendering oneself to the Police for participating in the movement meant obeying the law. The Chairman agreed that rule of law did not only mean adherence to the law,

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and included other importance aspects such as judicial independence, access to justice and the presumption of innocence. The Chairman was of the view that under the concept of the rule of law in Hong Kong, all persons arrested for and/or charged to criminal offences, including those persons arrested for and/or charged to criminal offences for their involvement in the "Occupy Central" movement, would be treated in a fair and objective manner by the Police, the DoJ and/or the courts.

Access to justice

25. Mr WONG Kwok-hing said that claims filed by members of the public with the Small Claims Tribunal, against the co-founders and certain protesters of the "Occupy Central" movement, for the money they lost due to street blockages caused by the movement had been transferred to the District Court for adjudication on application by the respondents of the claim cases. As most of the claimants against the co-founders and certain protesters of the "Occupy Central" movement did not have the means to engage lawyers to act on their behalf, Mr WONG asked what legal advice could be provided to these claimants who had to represent themselves in court against the respondents who could afford to engage lawyers to act on their behalf.

26. SJ responded that the DoJ could not intervene in private civil litigation. SJ however pointed out that parties to civil proceedings could be provided with legal aid if their applications for legal aid satisfied the means and merits tests required by the Legal Aid Ordinance (Cap. 91).

27. Mr Dennis KWOK enquired when the Legal Aid Department ("LAD") would be re-positioned and made directly accountable to the Chief Secretary for Administration's Office ("CSO"), which was the arrangement prior to the re-organization of the Government Secretariat in July 2007.

28. SJ responded that the Administration had in principle accepted the recommendation of the Legal Aid Services Council that reverting the LAD from the policy charge of the Home Affairs Bureau to that of the CSO could address the concern of some quarters in the community about the independence of the LAD. However, no concrete timetable had been set for implementing such transfer in light of other competing priority policy areas of the current term Government.

Arbitration and mediation services

29. Mr Dennis KWOK asked:

- (a) apart from the Permanent Court of Arbitration, what other world

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class international legal and dispute resolution institutions would set up offices in part of the space of the West Wing of the former Central Government Office and the entire former French Mission Building ("FMB"); and

- (b) whether the Administration would fund the renovation of the former FMB to create a favourable environment for law-related non-government institutions (including arbitration and mediation institutions) ("LROs") to set up offices there.

30. SJ responded that as invitation of major LROs to set up offices in Hong Kong was still underway, it would not be appropriate to disclose their names at this stage. As regards Mr KWOK's second question, SJ replied in the positive. The Administration was currently assessing the amount of money required to carry out the renovation work to convert the FMB, which was a historical building, into a building suitable for LROs to set up offices on the one hand and preserving the heritage of the building on the other.

Legislation on gender recognition

31. Mr CHAN Chi-chuen noted that in the light of the observations made in the judgement of the CFA in the case of *W v The Registrar of Marriages (FACV 4/2012)* ("the W case"), the Government had set up the Inter-departmental Working Group on Gender Recognition ("IWG"), chaired by SJ, to consider legislation and incidental administrative measures that might be required to protect the rights of transsexual persons in all legal contexts and to make such recommendations for reform as might be appropriate. In the light of this, Mr CHAN asked:

- (a) whether SJ was willing to update LegCo Members on the progress of the work of the IWG, say, every six months or on a yearly base; and if so, whether to update at this Panel, the Panel on Security or the Panel on Constitutional Affairs;
- (b) when would the IWG issue its consultation paper(s) in order to gauge what the overall consensus on the rights of transsexual persons might be, if any, before finalizing its recommendations to the Government;
- (c) whether consideration would be given to enacting legislation to allow civil union for couples, irrespective of their genders; and
- (d) what follow-up action would be taken by the Administration to protect the rights of transsexual persons in all legal contexts, as the

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Marriage (Amendment) Bill 2014 was voted down by LegCo during the resumption of Second Reading debate on the Bill on 22 October 2014.

32. SJ responded as follows:

- (a) he was open-minded on regularly updating LegCo Members on the progress of work of the IWG. However, DoJ would need to consider after the meeting as to which Panel was the most appropriate one to report the progress of work of the IWG;
- (b) the scope of the IWG's study included both recognition and post-recognition issues. In preparation for the issue of one or more consultation papers on gender recognition and related matters, the IWG had also held numerous informal meetings with doctors, psychologists, persons who had gone through and would undergo sex reassignment surgeries and other stakeholders. To date, the IWG had completed the drafting of a consultation paper on recognition issues;
- (c) although the terms of reference of the IWG did not include a study on civil union, there might be a possibility that the IWG would deliberate on the issue of civil union in its second stage study on post-recognition issues; and
- (d) the DoJ would discuss with the Security Bureau ("SB") on what actions SB would take this year to implement the CFA's Order made in the W case, as a result of the Marriage (Amendment) Bill 2014 being voted down by LegCo on 22 October 2014.

33. The Chairman urged the IWG, in drawing up its recommendations to the Government, to give due regard to the culture and core values of Hong Kong as well as the views and concerns of religious bodies.

Application of national security laws in Hong Kong under Article 18 of the Basic Law ("BL18")

34. Mr Albert HO said that a local Deputy of the National People's Congress had recently suggested that national security laws should be applied in Hong Kong under BL18. Mr HO asked whether to do so would contravene BL, as BL23 stipulated that Hong Kong should enact laws on its own to prohibit any act that would undermine the sovereignty, territorial integrity, unity and national security of our country. Mr LEUNG Kwok-hung raised a similar question.

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35. SJ responded that application of national laws under BL18 consisted of two aspects under BL18(3) and BL18(4). BL18(3) stipulated that the NPCSC might add laws, which should be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of Hong Kong, to the list of national laws that should be applied to Hong Kong in Annex III to the BL. However, it was clear, in his view, that BL23 should prevail over BL18(3) in that BL23 stipulated that Hong Kong should enact laws on its own to prohibit any act that would undermine the sovereignty, territorial integrity, unity and national security of our country. As regards BL18(4), it stipulated that the Central People's Government ("CPG") might issue an order applying the relevant national laws in Hong Kong only in the event that the NPCSC decided to declare a state of war or decided that Hong Kong was in a state of emergency. Neither one of the two conditions set out in BL18(4) had arisen for the CPG to issue an order applying the national security laws in Hong Kong. SJ further said that whilst Hong Kong had the constitutional duty to enact laws to implement BL23, there was no concrete timetable for implementing such at this stage.

Law Reform Commission ("LRC")'s proposals on class action

36. Mr Dennis KWOK enquired when the Administration would take forward the LRC's recommendation on introducing a class action regime in Hong Kong.

37. Solicitor General responded that following the publication of the LRC's report on "Class Actions" in May 2012, the DoJ had set up a cross-sector working group ("the Working Group") in December 2012 to study the LRC's proposals and to make recommendations to the Government on how to take the matter forward. The Working Group had so far held eight meetings. As some complex legal issues remained to be resolved, it was difficult to say at this stage when the Working Group would complete its work.

Operation of the LRC

38. Mr Dennis KWOK asked whether the LRC would adopt his suggestion, made at earlier Panel meetings, to engage more full-time law professionals so as to expedite the work of the LRC.

39. SJ responded that due to resource and other considerations, the Administration was still studying the proposal of engaging more full-time law professionals to work in the LRC. No concrete timetable could be given at this stage as to when the Administration would come to a view on the proposal.

Conclusion

40. The Chairman thanked SJ, USHA and their colleagues for attending the meeting.

IV. Provision of screens for complainants in sexual offence cases during court proceedings

LC Paper No. CB(4)367/14-15(05) -- Judiciary Administration
("JA")'s paper entitled
"Provision of screens for
complainants in sexual offence
cases during court
proceedings"

Briefing by the JA

41. Deputy Judiciary Administrator (Operations) ("DJA (Operations)") briefed members on the current arrangements of the provision of screen for complainants in sexual offence cases during court proceedings and the Judiciary's position in regard to the proposal to provide screens for complainants in sexual offence cases during court proceedings, details of which were set out in the JA's paper [LC Paper No. CB(4)367/14-15(05)]. Specifically, the Judiciary had considered the following options:

- (a) whether the law should be changed to provide for automatic provision of screens for complainants in sexual offence cases upon the prosecution's applications;
- (b) whether, within the existing framework, the current procedures could be improved for considering applications for use of screens for complainants in sexual offence cases by amending Practice Direction - 9.3 "Criminal Proceedings in the Court of First Instance" and Practice Direction - 9.4 "Criminal Proceedings in the District Court" to require, as a matter of standing procedure, the counsel to advise the presiding judge of the following during the Pre-trial Review of every sexual offence case:
 - (i) whether the complainant had requested a screen; and
 - (ii) whether the prosecution considered it appropriate to make such an application; and

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- (c) whether, within the existing framework, certain guidelines should be developed to set out in greater details the factors that should be taken into account when the court considered applications for use of screens for complainants in sexual offence cases.

Having considered the three options, the Judiciary considered that option (b) should be adopted. Option (a) should be referred to the Administration for further examination, whilst option (c) should be rejected as to do so in a non-comprehensive manner would only affect adversely the unfettered exercise of judicial discretion.

Views of the Hong Kong Bar Association ("the Bar Association")

42. Mr Andrew BRUCE said that the Bar Association was in favour of option (b). The Bar Association considered that the adoption of option (b) should not undermine the unfettered exercise of judicial discretion. First, it had long been the practice in Hong Kong courts to provide some protection to not just victims of sexual offence cases but of other types of cases such as blackmail cases. Second, under Part IIIA of the Criminal Procedure Ordinance (Cap. 221), vulnerable witnesses had been allowed to give evidence by way of a live television link in criminal proceedings for over 20 years. Mr BRUCE further said that many other common law jurisdictions, such as Canada, New Zealand and Australia, had the long tradition of providing protection to victims of sexual offences, including the use of a screen to shield the victim to prevent him/her from facing the defendant during court proceedings.

Discussion

43. Members noted a letter dated 26 January 2015 from the Association Concerning Sexual Violence Against Women ("the Association") expressing its views on the options set out in the JA's paper to provide screens for complainants in sexual offence cases during court proceedings [LC Paper No. CB(4)412/14-15(01)] tabled at the meeting. Specifically, the Association considered that prior to adopting option (a), option (b) should first be adopted.

44. Ms Emily LAU expressed dissatisfaction that despite the long-standing call by the women's groups for the automatic provision of a screen for sexual offence victims during court proceedings, no progress had been made in this regard.

45. DJA (Operations) responded that the Judiciary could not alone take the view on the proposal to provide automatically screens for complainants of sexual offence cases upon application, as the adoption of such required legislation and the decision on whether or not to introduce a legislative proposal

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to effect such rested with the Administration. DJA (Operations) further said that the Judiciary was expediting the work of revising Practice Direction - 9.3 and Practice Direction 9.4 for the early adoption of option (b).

46. Ms Emily LAU noted from the Association's letter that the Association considered the figures provided by the JA in paragraph 6 of its paper to the Panel inaccurate. According to the Association, at least five applications made to the High Court ("HC") from 1 June 2013 to 31 December 2014 for the use of screen for complainants in sexual offence cases during court proceedings were refused, whereas it was mentioned in the JA's paper that all such applications received by the HC during the same time period were granted. DJA (Operations) undertook to double-check the figures concerned after the meeting.

47. Ms Emily LAU suggested and members agreed to invite the Association and other women's groups and stakeholders to give views on the provision of screens for complainants in sexual offence cases during court proceedings at a future meeting of the Panel.

48. Mr Dennis KWOK said that despite the adoption of option (b), option (a) should still be pursued. Mr KWOK further said that it should be made clear in the revised Practice Direction 9.3 and Practice Direction 9.4 that the counsel should apprise complainants in sexual offence cases that they could request for the provision of a screen during court proceedings and the presiding judge should also ask the counsel to provide the reason(s) why the prosecution did not consider it appropriate to make an application for use of screen during court proceedings.

49. Assistant Director of Public Prosecutions responded that the DoJ had all along maintained close dialogue with the women's groups to gather their views and suggestions on how the issue of providing better protection to victims of sexual offences during court proceedings could be better addressed. The DoJ had already and would continue to discuss with the women's groups on ways to improve the existing procedure for applying for the use of screen during court proceedings.

50. Dr Elizabeth QUAT expressed disappointment that no progress had been made in providing screen automatically for victims of sexual offences during court proceedings, despite repeated calls for such provision made over a long stretch of time. As automatic provision of screen for sexual offence victims during court proceedings required legislation and the decision on whether or not to introduce legislative proposal to effect such rested with the Administration, Dr QUAT said that the relevant policy bureau should be invited to attend a meeting of the Panel to report to members its position on the proposal as soon as practicable.

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51. Mr Paul TSE said that he did not consider that providing a screen for complainants in sexual offence cases during court proceedings would undermine the rights of the accused to a fair trial, as the screen was merely to shield the complainant from being seen by the public. Mr TSE shared the views of Mr Dennis KWOK that option (b) should be adopted first, whilst option (a) should continue to be pursued. As regards option (c) to provide guidelines on the factors that the presiding judge should take into account when considering applications for use of screens for complainants in sexual offence cases, Mr TSE said that he could not totally agree that the adoption of such option would affect adversely the unfettered exercise of judicial discretion as these guidelines would only serve as a checklist and similar guidelines were used in other court applications such as bail.

Conclusion

52. In closing, the Chairman said that the Panel would invite deputations to give views on the provision of screen for complainants in sexual offence cases during court proceedings at a future meeting of the Panel. In addition to the JA and the DoJ, the relevant policy bureau would also be invited. To better facilitate members' understanding of option (b), JA was requested to provide a paper setting out in greater details the merits of option (b) in addressing the requests for use of screens for complainants in sexual offence cases during court proceedings and the amendments that would be made to Practice Direction 9.3 and Practice Direction 9.4 to improve the application procedure for use of screens.

V. Any other business

53. There being no other business, the meeting ended at 6:45 pm.

Council Business Division 4
Legislative Council Secretariat
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