

立法會
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LC Paper No. CB(4)1205/14-15
(These minutes have been seen
by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 23 March 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 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 WONG Yuk-man
 - 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
 - Hon TANG Ka-piu, JP
 - Dr Hon CHIANG Lai-wan, JP
 - Hon CHUNG Kwok-pan
- Members absent** :
- Hon James TO Kun-sun
 - Hon Ronny TONG Ka-wah, SC

Public Officers : Item III
attending

Home Affairs Bureau

Mr Laurie LO Chi-hong, JP
Deputy Secretary for Home Affairs (1)

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

Legal Aid Department

Mr Thomas Edward KWONG, JP
Director of Legal Aid

Ms Alice CHUNG Yee-ling
Deputy Director of Legal Aid
(Policy and Administration)

Item IV

Administration Wing

Mrs DO PANG Wai-yee, JP
Deputy Director of Administration 2

Mrs Judy LI KWOK Chi-kit
Director of Protocol

Department of Justice

Ms Melody HUI Po-yu
Senior Government Counsel
(Treaties & Law)

Attendance by : Item III
invitation

Hong Kong Bar Association

Mr Ruy BARRETTO, SC

Mr Robert PANG Yiu-Hung, SC

Mr Nicholas PIRIE

Mr Valentine YIM See-tai

The Law Society of Hong Kong

Mr Leslie YEUNG Kwok-leung

Member

Legal Aid Committee

Mr Dennis HO Chi-kuen

Member

Legal Aid Committee

Ms LAM Ka-lai

Assistant Director

Practitioners Affairs Department

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

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

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

Members noted that there was no information paper issued since the last meeting.

II. Items for discussion at the next meeting

LC Paper No. CB(4)658/14-15(01) -- List of outstanding items for discussion

LC Paper No. CB(4)658/14-15(02) -- List of follow-up actions

2. Members agreed to discuss the following items at the next regular meeting of the Panel scheduled for 27 April 2015 at 4:30 pm:

- (a) Legal education and training in Hong Kong; and
- (b) Review of solicitors' hourly rates.

3. Members further agreed to invite different stakeholders, such as the law faculties of the three local universities and law students, to give views on the issue of "Legal education and training in Hong Kong" at the April 2015 meeting.

4. Dr CHIANG Lai-wan suggested to discuss the issue of penalties and sentences for criminal offences at a future meeting of the Panel, as there was growing public concern that the sentencing of criminal offences were sometimes not proportionate to the criminal acts committed. For instance, a person was sentenced to two months' imprisonment for stealing chocolate, whereas a person was not sentenced to imprisonment for repeatedly hacking the Government's websites. Members agreed.

III. Provision of legal aid and assignments of lawyers to legally aided persons by the Legal Aid Department

LC Paper No. CB(4)658/14-15(03) -- Administration's paper on "Provision of legal aid and assignments of lawyers to legally aided persons by the Legal Aid Department"

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LC Paper No. CB(4)658/14-15(04) -- Background brief on "Provision of legal aid and assignment of lawyers to legally aided persons by the Legal Aid Department" prepared by the Legislative Council Secretariat

Declaration of interest

5. Mr Dennis KWOK and Mr Albert HO declared that they were on the Legal Aid Panel under the Legal Aid Department ("LAD").

Briefing by the Administration

6. Deputy Secretary for Home Affairs (1) ("DSHA(1))" briefed members on the provision of legal aid and assignment of lawyers to legally aided persons by LAD, details of which were set out in the Administration's paper (LC Paper No. CB(4)658/14-15(03)).

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

7. Mr Ruy BARRETTO said that the existing Supplementary Legal Aid Scheme ("SLAS") failed far short of meeting the needs of the "sandwich class" for access to justice. Mr BARRETTO pointed out that of the 14 improvements to SLAS proposed by the Bar Association (in Enclosure 1 to the Bar Association's statement dated 26 September 2012 on the "Desirability of an Independent Legal Aid Authority - the current situation is an impediment to access to justice for persons of limited means and "the sandwich class" (LC Paper No. CB(4)854/13-14(01)) which was re-submitted to the Panel for its meeting held on 24 June 2014, only four of them had been partly implemented by LAD in November 2012. The checklist itemized the improvements to SLAS proposed by the Bar Association since 2002, which was supported by the Panel at its meeting held on 21 July 2010. Mr BARRETTO further pointed out that although the Legal Aid Services Council ("LASC") had formed a Working Group on Expansion of SLAS ("the Working Group") to conduct a further review with a view to presenting a new round of recommendations to the Government and the Bar Association had been told that it would be consulted on the review, the Bar Association had yet to hear anything from the Working Group on the review. To meet the long overdue needs of the "sandwich class" for legal aid, the Bar Association urged LASC to expeditiously come up with a timetable for completing the review on expansion of SLAS and to consult the Bar Association on the review before presenting its recommendations to the Government.

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8. Mr Nicholas PIRIE said that the financial eligibility limit ("FEL") of the Ordinary Legal Aid Scheme ("OLAS") needed to be substantially raised to improve access to justice. Mr PIRIE pointed out that despite the fact that the FEL of OLAS had been raised from \$175,800 in 2011 to \$269,620 as at present (i.e. 53%), the take-up rate for civil and criminal legal aid under OLAS remained much the same each year since 2011. On the other hand, since the FEL of SLAS had been raised from \$488,400 in 2011 to \$1,348,100 as at present (i.e. some 176%), the take-up rate for civil legal aid under SLAS had increased some 50% over the years. Mr PIRIE further pointed out that insofar as the OLAS was concerned, the percentages of cases involving litigants in person ("LIPs") remained very high and saw no sign of decline. For instance, the percentages of civil trials in the District Court involving LIPs were 53% in 2010 and 58% in 2014 and the percentages of civil appeals in the High Court ("HC") involving LIPs were 51% in 2010 and 48% in 2014. Mr PIRIE also said that in view of the pressure exerted by the growing number of legal proceedings involving LIPs on judicial time and resources due to the LIPs' unfamiliarity with the rules and procedures of the courts, some HC judges had commented in their judgments as to why the plaintiffs or the defendants of the cases concerned were not granted legal aid.

Views of the Law Society of Hong Kong ("the Law Society")

9. Mr Leslie YEUNG said that the Law Society shared the views of the Bar Association expressed at the meeting. Mr YEUNG further said that the Law Society's stance on the need to substantially raise the FEL of OLAS and expand the scope of SLAS to improve access to justice was set out in its paper to the Panel in 2010 (LC Paper No. CB(2)2103/09-10(01)). The Law Society's stance on the matters remained unchanged.

Responses from the Administration

10. Director of Legal Aid ("DLA") responded as follows:

- (a) LASC was actively considering the need and viability of further expanding the scope of SLAS. The views of the Bar Association on the expansion of the scope of SLAS should be much welcomed by the Working Group whose chairman was a representative of the Bar Association. To his understanding, some members of the Bar Association had previously submitted their views on the expansion of the scope of SLAS to the Working Group;
- (b) the reason why some parties to the legal proceedings were LIPs did not necessarily mean that they were refused legal aid, as some

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LIPs chose not to apply for legal aid for various reasons; and

- (c) a judge or District Judge could grant an accused person appearing before him/her legal aid, notwithstanding that LAD had refused his/her legal aid application, if the judge or District Judge considered that the accused person should be granted legal aid under rule 8(3) of the Legal Aid in Criminal Cases Rules (Cap. 221D).

Discussion

Provision of legal aid

11. Mr WONG Yuk-man said that although the policy objective of legal aid was to ensure that no one with reasonable grounds for pursuing or defending a legal action was denied access to justice because of a lack of means, the bureaucratic practices of the LAD had imposed unnecessary burden/nuisance on the applicants as well as legally aided persons. Mr WONG cited the following examples:

- (a) requiring applicants to produce supporting documents on maintaining their parents often prolonged the application process, as not all applicants could readily produce such documents;
- (b) although the court proceedings would be put on hold for 42 days after DLA filed at court a memorandum of notification upon receipt of a legal aid application, LAD often took more than 42 days, and in some cases up to three to four months, to complete processing an application. This had resulted in the applicants having to represent themselves in legal proceedings;
- (c) assignment of lawyers by LAD to legally aided persons was sometimes inappropriate. A case in point was that a legally aided person in a judicial review case to challenge the free postage arrangements under the Legislative Council Ordinance (Cap. 541) for favouring political parties was assigned a lawyer from a law firm run by Mr Albert HO and Mr James TO who were both members of the Democratic Party and candidates of the District Council (second) functional constituency election in the 2012 Legislative Council ("LegCo") Election; and
- (d) although a party to any proceedings might choose to use either or both of the official languages, i.e. English and Chinese languages, during court proceedings and the party could request his/her

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lawyer to use either English or Chinese language to represent him/her during court proceedings under section 5 of the Official Languages Ordinance (Cap. 5), there were instances whereby LAD refused to fund legal proceedings conducted in Chinese language if the assigned bilingual lawyers used English language, instead of Chinese language as requested by their clients, during court proceedings.

12. Mr WONG further said that comparison with overseas jurisdictions set out in paragraphs 11 to 13 of the Administration's paper was superficial. For instance, although it was mentioned in paragraph 11 of the Administration's paper that personal injuries and matrimonial cases were usually not covered under legal aid in overseas jurisdictions, the paper did not mention whether those overseas jurisdictions which did not provide legal aid for personal injuries and matrimonial cases adopted the contingency fee regime so that persons not qualified for legal aid could still have access to legal services from lawyers in the private sector.

13. DLA responded as follows:

- (a) legal aid applicants were not required to provide documentary proof for maintaining their parents for meeting the means test, if the applicants could provide other forms of proof in maintaining their parents;
- (b) means and merits tests were conducted concurrently by LAD to avoid prolonged processing time of legal aid applications; and
- (c) although an aided person might use either Chinese or English language to address the court or testify in the court, the use of which of these two official languages in the court was subject to the wish of the presiding judge or judicial officer who might use either or both of the official languages in any proceedings or a part of any proceedings as he/she deemed fit under section 5(1) and (2) of Cap. 5.

14. At the request of Mr WONG Yuk-man, DLA agreed to provide the following information after the meeting:

- (a) target processing time and performance pledge for civil legal aid applications and the percentage of civil legal aid applications processed within the performance pledge in each year in the past three years; and

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- (b) target processing time and performance pledge for criminal legal aid applications and the percentage of criminal legal aid applications processed within the performance pledge in each year in the past three years.

15. Dr CHIANG Lai-wan asked:

- (a) whether a person, whose legal aid application had been turned down by LAD for failing the means test, could apply for legal aid for the same case again if the person's financial capacity subsequently could satisfy the means test; and
- (b) whether there had been a recent increase in the number of legal aid applications for cases involving a breach of the Hong Kong Bill of Rights Ordinance (Cap. 383) or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong ("human rights cases").

16. DLA replied in the positive to the first question and in the negative to the second question raised by Dr CHIANG Lai-wan in paragraph 15 above.

17. At the request of Dr CHIANG Lai-wan and the Chairman, DLA agreed to provide the following information after the meeting:

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- (a) the numbers of civil legal aid applications received, granted and refused under OLAS and SLAS each year in the past three years;
- (b) the numbers of criminal legal aid applications received, granted and refused under the OLAS each year in the past three years;
- (c) the amounts spent on civil legal aid cases by case types under OLAS and SLAS each year in the past three years;
- (d) the amounts spent on criminal legal aid cases by case types under OLAS each year in the past three years;
- (e) numbers of applications relating to human rights received and refused each year in the past three years; and
- (f) numbers of legal aid certificates issued for human rights cases each year in the past three years whereby the financial eligibility limit of the aided persons was waived by the DLA under section 5AA of the Legal Aid Ordinance (Cap. 91) ("LAO").

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18. Mr LEUNG Kwok-hung said that to fully implement the policy objective of legal aid, aided persons of human rights cases and of judicial review cases involving important points of law affecting the general public should be waived from making a contribution upon acceptance of the offer of legal aid.

19. DLA responded that delineating which categories of aided persons should be waived from making a contribution upon the acceptance of the offer of legal aid would be impractical and divisive. DLA however pointed out that he had discretion to waive the financial eligibility limit of means test when human rights issues were involved under section 5AA of the LAO. Such an exception was given as a matter of human rights policy consideration.

20. Mr LEUNG Kwok-hung said that it was not reasonable to include the financial resources of the spouse of the applicant in assessing the financial resources of the applicant. Mr LEUNG urged LAD to exclude the financial resources of the applicant's spouse in assessing the financial resources of the applicant.

21. DLA responded that including the financial resources of the applicant's spouse in assessing the financial resources of the applicant was reasonable, as the spouse would also benefit from the damages or compensation recovered in the proceedings, if any, if the applicant won the case. DLA further said that using household income to assess the financial resources of legal aid applicants was practised in many overseas jurisdictions.

22. The Chairman said that she had received complaints from some members of the public that the time taken by LAD to process legal aid applications for cases arising from or relating to the "Occupy Central" movement was faster than that for processing other legal aid applications. The Chairman asked LAD whether this was the case; and if so, whether the expeditious handling of cases arising from or relating to the "Occupy Central" movement was based on political consideration.

23. DLA responded that there was no question of LAD expediting the processing of legal aid applications for cases arising from or relating to the "Occupy Central" movement. DLA pointed out that when processing legal aid applications, priority was only accorded to applications with imminent statutory bar dates, including applications relating to judicial reviews. Such applications were treated as urgent cases.

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24. At the request of the Chairman, DLA undertook to provide the following information after the meeting:

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- (a) numbers of applications received and refused for cases arising from or relating to the "Occupy Central" movement; and
- (b) average time taken to complete the processing of all legal aid applications arising from or relating to the "Occupy Central" movement.

Expansion of the scope of SLAS

25. Mr Albert HO said that as SLAS was a self-financing scheme and as a stringent approach was adopted by LAD in assessing the merits of an application under SLAS, such as whether the case had a reasonable chance of success and whether the likely benefit would be sufficient to cover the costs that might be incurred in the proceedings, he could not see why the scope of SLAS could not be further expanded to improve access to justice. Mr HO urged that review on the expansion of SLAS be completed as soon as practicable. Mr HO further urged that the scope of OLAS and SLAS could cover defamatory libel cases.

26. Mr Dennis KWOK said that although LASC had formed a Working Group some two years ago to further review whether there was any room to further expand the scope of SLAS which was last expanded in November 2012, the Working Group had yet to come up with any recommendations on the matter. Mr KWOK said that the Working Group should be requested to provide a report on the progress of its review to the Panel.

27. DLA responded that it should not take long for the Working Group to complete its review on the scope of SLAS, as the consultation work of the Working Group was drawing to a close. DSHA(1) suggested that HAB follow up with the Working Group on providing a progress report of its review to the Panel. Members agreed.

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Assignments of lawyers to aided persons

28. Referring to the case mentioned by Mr WONG Yuk-man in paragraph 11(c) above, Dr CHIANG Lai-wan asked why such inappropriate assignment of lawyer was made by LAD.

29. DLA responded that he could not openly comment on individual legal aid applications, not to mention that he did not have information on the case

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mentioned by Mr WONG Yuk-man in paragraph 11(c) above on hand. DLA however pointed out that section 13 of the LAO provided that where a legal aid certificate was granted, the DLA might act for the aided person through legal aid counsel or assign any lawyers in private who were on the Legal Aid Panel selected by either the aided person if he/she so desired, or the DLA. In other words, the aided person could reject a lawyer selected by DLA and nominate his/her lawyer on the Legal Aid Panel. When legally aided persons decided to nominate their own lawyers, the legally aided person's nominations should be given due weight and should not be rejected unless there were compelling reasons to do so.

30. Mr Albert HO said that lawyers who engaged in political activities and their employee lawyers, if any, should not be excluded from being assigned legal aid work involving government departments or decisions, as the Independent Commission Against Corruption ("ICAC") had reviewed the adequacy of the safeguards in the lawyer assignment procedures to avoid the risk of abuse. Moreover, if an assigned lawyer was found to have engaged in any improper conduct, such as touting or champerty, LAD would impose appropriate sanctions on the lawyer concerned and refer the case to the Hong Kong Bar Association or the Law Society of Hong Kong for follow-up action. Mr HO further said that aided persons should have the right to choose the lawyers on the Legal Aid Panel to represent them, as Article 35 of the Basic Law ("BL") guaranteed the right of all Hong Kong residents their choice of lawyers to represent them in the courts. Mr HO pointed out that in selecting a lawyer for a lawsuit, it was of paramount importance that a client must have trust in his/her counsel and the counsel concerned had the relevant experience and expertise required to take up the case.

31. Mr Dennis KWOK said that the Administration should have mentioned in its paper to the Panel that under BL35 all Hong Kong residents had the right to choose their lawyers to represent them in the courts.

32. The Chairman noted from paragraph 6 of the Annex to the Administration's paper that assignments of civil legal aid cases should not generally exceed 45 and 25 cases for solicitors and counsel respectively within the past 12 months. The Chairman queried whether such limits were set too high, especially for solicitors who could be assigned up to 45 cases within the past 12 months.

33. DLA responded that the existing limits on legal aid assignments were drawn up by LAD in consultation with LASC and the two legal professional bodies. DLA further said that it was not impossible for a solicitor to handle up to 45 civil legal aid cases within the past 12 months, as some of these cases were straightforward ones without requiring a court hearing and the solicitor

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could assign some of his/her work to his/her fellow solicitor(s) in the law firm.

34. The Chairman requested LAD to review the existing limits on legal aid assignments, in view of the comments made by some members of the legal sector that legal aid work was often distributed to same solicitors and counsel on the Legal Aid Panel. The Chairman further requested LAD to provide the following information:

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- (a) the number of civil cases assigned to the 50 Panel solicitors and counsel with the most number of assigned cases, the types of cases assigned, and the total amounts of legal fees expended to these solicitors and counsel in the past year; and
- (b) the number of criminal cases assigned to the 50 Panel counsel with the most number of assigned cases, the types of cases assigned, and the total amounts of legal fees expended to these counsel in the past year.

DLA agreed.

35. Mr Leslie YEUNG of the Law Society said that the existing limits on assignments of civil and criminal legal aid cases were inconsistent and should also be reviewed. At present, limits on legal aid assignments for civil cases was up to 45 and 25 cases within the past 12 months for solicitors and counsel respectively, whereas such limits for criminal cases were up to 30 cases or \$600,000 legal aid costs within the past 12 months (whichever occurred first) for solicitors and up to 30 cases or \$1.2 million legal aid costs within the past 12 months (whichever occurred first) for counsel.

Measures to address touting or champerty activities in legal aid cases

36. Mr NG Leung-sing expressed concern about improper touting or champerty in legal aid cases. Mr NG pointed out that in recent years, aided persons of judicial review cases were often the same persons and the lawyers nominated by these aided persons were the lawyers who assisted them to apply for legal aid or had ties with these lawyers. Dr Elizabeth QUAT expressed similar concern.

37. DLA responded that to address the public's growing concern on improper touting or champerty activities in legal aid cases, a new declaration system was introduced in September 2013 after consultation with LASC and two branches of the legal profession. The objective of the new system was to ensure that the nominations of lawyers were made out of the aided person's own free will and they had not agreed to share any damages, property or costs

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which they might get or retain in the proceedings with any person(s) including the lawyers nominated, the lawyers' employee, agent or claims agent. The aided person was required to give a written declaration in support of his/her nomination. As for the nominated lawyer, the declaration was incorporated into the assignment letter as one of the conditions. The lawyer nominated was obliged to return the papers to the LAD if he/she could not fulfil this new condition. DLA further said that to enhance the transparency and fairness in the assignments of lawyers, LAD and ICAC had formed a Corruption Prevention Group in mid-2013 to discuss issues relating to prevention of corruption and bribery. ICAC had recently completed their study on LAD's assignment system for lawyers and experts, and had submitted its report with recommendations to LAD in January 2015. LAD would carefully study ICAC's report and recommendations.

38. Mr NG Leung-sing asked whether consideration would be given to making the assignment system for lawyers more stringent, such as allowing LAD to have the final say on the assignments of lawyers to aided persons.

39. DLA reiterated that under section 13 of the LAO, aided persons had the right to select any lawyers in private practice who were on the Legal Aid Panel if they so desired. DLA pointed out that in the assignments of legal aid cases, LAD adhered to the fundamental principle that the aided person's interest was of paramount importance. As long as the solicitor/counsel nominated by the aided person was legally qualified and did not have poor performance record, LAD would normally accede to and would not reject an aided person's choice of solicitor/counsel unless there were compelling reasons to do so. LAD was of the view that it was improper for the Department and would be a slur on the character and professional integrity of the nominated lawyer for LAD to enquire if the nomination was promoted by some kind of questionable conduct on the part of the lawyer concerned. In judicial review cases, any such enquiry might also be interpreted as an unnecessary and improper attempt to influence the outcome of legally aided proceedings when the lawyer nominated by the aided person was professionally qualified and had an untarnished professional record.

40. Dr Elizabeth QUAT said that although the new declaration system might deter improper touting or champerty activities, the system could not prevent a political party from seeking to overturn, say, a government capital work project passed by LegCo, by arranging a person, whose financial resources could satisfy the means test, to apply for legal aid judicial review on such decision and instructing that person to nominate a lawyer on the Legal Aid Panel who had ties with or was member of the political party should the person be granted legal aid.

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41. DLA responded that under the LAO, a legal aid applicant must also satisfy the merits test in that the case must have reasonable grounds. DLA further said that as aided persons had the right to nominate their lawyers to represent them under section 13 of the LAO, the fact that an aided person decided to nominate a lawyer who assisted him/her to apply for legal aid or where the nominated lawyer had ties, such as political affiliation, with the person who assisted the aided person to apply for legal aid was not a reason for LAD to reject such nomination unless there was conflict of interests in the assignment of the lawyer. DLA pointed out that when processing the nomination of lawyers, LAD would base on the assignment criteria to determine whether the choice of lawyer was appropriate by assessing whether the nominated lawyer had attained the relevant seniority, experience and expertise required to take up the assignment. If the nominated lawyer was considered not appropriate on grounds such as having previous records of unsatisfactory performance in handling legal aided cases or currently handling an overwhelming number of legal aid cases, etc., LAD would discuss the choice of lawyer with the aided person. When necessary, LAD would ask the aided person to select another Panel lawyer and assess whether the newly nominated lawyer was appropriate in taking up the case. The lawyer eventually assigned to take up the case was generally agreed to by both the aided person and LAD.

42. Responding to Dr Elizabeth QUAT's enquiry about the meaning of "conflict of interests" in the assignments of lawyers to aided persons, DLA said that this meant that the assignments were not made out of the aided persons' own free will and the assigned lawyers would get/obtain benefits from the proceedings should the legal aid cases concerned be won. DLA further said that touting or champerty in legal aid cases, if occurred, often occurred in claims cases, such as those relating to personal injuries, and not in judicial review cases.

43. Mr Steven HO requested LAD to provide information on the number of legal aid cases concerning the "Occupy Central" movement in which the lawyers assigned to handle the cases were nominated by the aided persons. DLA undertook to provide the information after the meeting.

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44. Mr Dennis KWOK said that it would be inappropriate if the political background and/or stance of solicitors and counsel on the Legal Aid Panel would be made a factor for assignments of lawyers to aided persons. To his understanding, lawyers in Hong Kong had always been political neutral in offering legal advice to their clients. Mr KWOK further said that there were sufficient safeguards to ensure whether a legal aid application for judicial review should be granted. Apart from the fact that the legal aid applicant for

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judicial review must satisfy the means test, the judicial review case must have reasonable grounds for legal aid to be granted. If in doubt, section 9(d) of the LAO empowered DLA to seek independent opinion from outside counsel. Even if LAD decided that the legal aid application for judicial review also satisfied the merits test, no legal aid would be granted until the applicant was successful in his/her leave application to the court for judicial review. In the leave application, the applicant must, amongst other things, state the grounds on which his/her application was based. Mr KWOK requested and DLA agreed to provide information on the number of independent legal opinion sought from outside counsel under section 9 of the LAO for applications involving complicated legal issues and the number of counsel who provided such section 9 opinions for each year in the past three years.

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45. Mr Dennis KWOK said that the Bar Association had written to LAD on 23 August 2013 suggesting amending paragraph 3 of the conditions of assignment to Panel members under the new declaration system to better prevent abuses of the system. Mr KWOK asked LAD why it had not taken the Bar Association's suggestion on board.

46. Mr Leslie YEUNG of the Law Society expressed support for the Bar Association's suggested amendments to paragraph 3 of the conditions of assignment to Panel members under the new declaration system.

47. DLA responded that as explained by LAD in its reply to the Bar Association dated 30 August 2013, the reasons for not amending paragraph 3 of the conditions of assignment to Panel members under the new declaration system were twofold. First, a general approach was adopted when formulating the wording of the new conditions on the understanding and belief that the legal profession was an honourable one with its members holding to the highest standard of professional ethics. Second, the Law Society had advised its members of the new conditions in their latest circular. LAD would however keep the suggestion in mind if and when the declaration system was to be reviewed in future and the condition concerned was proved to be inadequate. As the Law Society now indicated its support to the Bar Association's suggested amendment to paragraph 3 of the conditions of assignment to Panel lawyers, DLA said that LAD would re-visit the suggested amendment and revert to the two legal professional bodies later.

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Impact of LIPs on court proceedings

48. Mr Dennis KWOK said that the Administration should give due regard to the impact of the increasing number of LIPs on court waiting times, court users and judicial resources in its provision of legal aid. Mr KWOK pointed out that the existing inadequate provision of legal aid had given rise to many LIPs,

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particularly in the HC whereby LIPs comprised over 50% of certain types of cases heard in the HC. The ever increasing number of LIPs prolonged the already long court waiting time, particularly in the HC, and added to the already heavy workload of the courts, as judges needed to spend a lot of time to assist LIPs during court proceedings. Such problems were aggravated by insufficient judicial manpower. For example, there were at present 10 vacant judicial posts in the Court of First Instance of the HC. Mr Albert HO expressed similar views.

49. DLA responded that one aspect of the work of the Civil Service Reform Monitoring Committee, of which he was a member, was to monitor the number of hearings involving LIPs to ensure the effective operation of the judicial system. In this regard, LAD had been and would continue to closely liaise with the Judiciary to understand the situation of LIPs.

50. DSHA(1) supplemented that as explained by DLA earlier at the meeting, the reasons why some people chose to represent themselves in courts were varied, such as they chose not to apply for legal aid and their legal aid applications failed to satisfy the merits test. However, in recognition of the challenges posed to civil service justice by an increasing number of LIPs, a "Two-year Pilot Scheme to Provide Legal Advice for Litigants in Person" ("the LIPs Scheme") was launched by the Home Affairs Bureau ("HAB") in March 2013 to provide legal advice on procedural matters for LIPs who had commenced or were parties to civil proceedings in the District Court or above and had not been granted legal aid. As at end February 2015, the LIPs Scheme had assisted 1 188 LIPs and conducted some 3 400 advice sessions. HAB staff had interviewed users of the LIPs Scheme, and over 90% of them were satisfied with the services provided by the Scheme. DSHA(1) further said that as the two-year pilot had recently been completed, HAB would shortly seek the advice of the Steering Committee on the Provision of Legal Advice for LIPs Scheme, chaired by a former HC Judge, Mr PANG Kin-kee, on the future arrangements with regard to the provision of legal advice for LIPs in the light of the operational experience.

Re-positioning of LAD

51. Mr LEUNG Kwok-hung said that it was not necessary to place the formulation and oversight of policy matters on legal aid under HAB, as LASC, established in 1999 under the LASC Ordinance (Cap. 489), was tasked to oversee the administration of legal aid services provided by LAD and to advise the Chief Executive on legal aid policy.

52. DSHA(1) responded that as advised at the meeting of the Panel held on 24 June 2014, the Administration agreed to accept in principle LASC's

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recommendation that the responsibilities for formulating legal aid policy and "housekeeping" LAD should be vested with the Chief Secretary for Administration's Office ("CSO") and DLA should report directly to the Chief Secretary for Administration, with the implementation timetable be reviewed in the light of various commitments of CSO in this term of Government and the progress of various on-going reviews which HAB was undertaking.

Provision of legal assistance to Hong Kong people detained/arrested in the Mainland

53. The Chairman asked whether consideration could be given to expanding the provision of legal aid or free legal advice by the LIPs Scheme to Hong Kong people detained/arrested in the Mainland.

54. DSHA(1) replied in the negative, as the provision of legal aid as well as the free legal advice by the LIPs Scheme were confined to cases heard in Hong Kong courts.

Conclusion

55. The Chairman said that the Panel would continue to closely monitor the provision of legal aid. In the meantime, the Administration was requested to revert to members on the progress of work of the Working Group and provide information requested by members at the meeting.

IV. Subsidiary legislation relating to privileges and immunities conferred on consular posts

LC Paper No. CB(4)505/14-15(01) -- Information paper on "Subsidiary legislation relating to privileges and immunities conferred on consular posts"

56. Deputy Director of Administration 2 ("DDA(2)") briefed members on the Government's paper (LC Paper No. CB(4)505/14-15(01)) which provided information on:

- (a) the granting of privileges and immunities ("Ps&Is") by the Central People's Government ("CPG") to specific career consular posts established in the Hong Kong Special Administrative Region ("HKSAR") as well as their respective personnel; and
- (b) the progress of the HKSAR Government's preparation of the subsidiary legislation relating to the Ps&Is conferred on the

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Consulate General of Japan and its personnel.

57. DDA(2) further said that the Government planned to submit the subsidiary legislation relating to the Ps&Is conferred on the Consulate General of Japan and its personnel to LegCo for negative vetting in the second quarter of 2015.

Discussion

58. Mr Albert HO noted from paragraph 11 of the Administration's paper that the bilateral consular agreements signed by the CPG, being a state party of the 1963 Vienna Convention on Consular Relations ("VCCR"), with other state parties to the VCCR were given effect in the HKSAR by the Regulations of the People's Republic of China Concerning Consular Privileges and Immunities, which was a national law applicable to the HKSAR by promulgation under BL18. Mr HO asked when such a national law was applied to the HKSAR.

59. DDA(2) replied that the Regulations of the People's Republic of China Concerning Consular Privileges and Immunities listed in Annex III to the Basic Law had been applied to the HKSAR since 1 July 1997.

60. Senior Government Counsel (Treaties & Law) supplemented that the Regulations of the People's Republic of China Concerning Consular Privileges and Immunities was applied to the HKSAR as prescribed by Annex III to BL. In line with the common law practice, provisions of bilateral agreements applicable to the HKSAR that affected private rights and obligations or require exceptions to be made to the existing laws of the HKSAR should be underpinned by way of local legislation.

61. Responding to Mr Albert HO's enquiry as to whether Mainland officials working in Hong Kong were conferred Ps&Is in the HKSAR under the Regulations of the People's Republic of China Concerning Consular Privileges and Immunities, the Chairman said that whether a Mainland official working in the HKSAR was conferred Ps&Is in the HKSAR would depend on whether his/her sphere of work was dealing with foreign affairs.

Conclusion

62. The Chairman concluded that members had no objection to the Administration tabling the subsidiary legislation relating to the Ps&Is conferred on the Consulate General of Japan and its personnel to LegCo for negative vetting in the second quarter of 2015.

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V. Any other business

63. There being no other business, the meeting ended at 6:40 pm.

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