

立法會
Legislative Council

Ref : CB4/PL/AJLS

LC Paper No. CB(4)1283/14-15
(These minutes have been seen by
the Administration and the
Judiciary Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 27 April 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 Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon MA Fung-kwok, SBS, JP
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
- Members absent** : Hon Abraham SHEK Lai-him, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Starry LEE Wai-king, JP
Hon LEUNG Kwok-hung
Hon Alice MAK Mei-kuen, JP
Hon TANG Ka-piu, JP

**Public Officers
attending** : Item III

Department of Justice

Mr Peter WONG
Deputy Solicitor General

Miss Janice KWAN
Government Counsel

Item IV

Judiciary Administration

Mr NG Sek-hon
Deputy Judiciary Administrator (Operations)

Mr Wilson CHIU
Assistant Judiciary Administrator
(Quality & IT)

**Attendance by
invitation** : Item III

Hong Kong Bar Association

Mr Edward CHAN, SC, JP

Faculty of Law, The University of Hong Kong

Professor Michael HOR
Dean

Mr Wilson CHOW
Head of Department of Professional and Legal Education

Faculty of Law, The Chinese University of Hong Kong

Professor Christopher GANE
Dean

Mr Richard MORRIS
PCLL Programme Director

School of Law, City University of Hong Kong

Professor LIN Feng
Associate Dean

Mr Mitch STOCKS
Visiting Fellow

Hong Kong Shue Yan University Alumni Association

Mr Sammy NG
Vice-president of Shue Yan Friends of Law and Business
Department

Law Students' Society Executive Committee,
City University of Hong Kong

Miss Sharmaine CHAN Sin-yuen
President

Mr Arnold TANG Yu-hin
Internal Vice-President

The University of Hong Kong Law Alumni Association

Ms Elaine LIU, JP
President

Business and Professionals Alliance for Hong Kong

Mr Ricky SUN Wai-kei
Deputy Spokesperson
Committee on Youth

Item IV

The Law Society of Hong Kong

Mr Nicholas David HUNSWORTH
Member of Civil Litigation Committee and
Member of Working Party on Party and Party Rates

Mr Kenneth FOK
Director of 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 Katrina WU
Senior Council Secretary (4)2

Ms Rebecca LEE
Council Secretary (4)2

Ms Carmen HO
Senior Legislative Assistant (4)2

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

LC Paper No. CB(4)832/14-15(01) -- Information paper on "Proposed Legislative Amendments relating to Suitors' Funds Rules" provided by the Judiciary Administration

Members noted the above paper issued since the last meeting.

2. The Chairman informed members that the Judiciary Administration ("JA") was prepared to brief members on the legislative proposals relating to Suitors' Funds Rules at the meeting of the Panel scheduled for 22 June 2015. If any member wished to discuss the issue, they could inform the Secretariat after the meeting.

II. Items for discussion at the next meeting

LC Paper No. CB(4)825/14-15(01) -- List of outstanding items for discussion

LC Paper No. CB(4)825/14-15(02) -- List of follow-up actions

Action

3. The Chairman informed members that the item on "Provision of legal advice services for persons detained in police stations" requested by Mr Dennis KWOK in a letter dated 31 March 2015 had been included in the Panel's list of outstanding items for discussion.

4. Members agreed to discuss the following items at the next regular meeting of the Panel scheduled for 18 May 2015 at 4:30 pm:

- (a) Manpower and other support for the Judiciary;
- (b) Proposed creation of a supernumerary directorate post in the Judiciary Administration; and
- (c) Review on the implementation of Civil Justice Reform.

III. Legal education and training in Hong Kong

- LC Paper No. CB(4)825/14-15(03) -- Submission from the Standing Committee on Legal Education and Training on the "Progress of the Comprehensive Study on Legal Education and Training" and the "Tentative Timetable for the Study"
(English version only)
- LC Paper No. CB(4)825/14-15(04) -- Submission from the Law Society of Hong Kong
(English version only)
- LC Paper No. CB(4)825/14-15(05) -- Submission from the Faculty of Law, The Chinese University of Hong Kong
(English version only)
- LC Paper No. CB(4)825/14-15(06) -- Submission from the School of Law, City University of Hong Kong
(English version only)

Action

- LC Paper No. CB(4)850/14-15(01) -- Submission from the Chinese University of Hong Kong Law Alumni Association (Chinese version only)
- LC Paper No. CB(4)850/14-15(02) -- Submission from the Faculty of Law, The University of Hong Kong (English version only)
- LC Paper No. CB(4)825/14-15(07) -- Background brief on "The Law Society of Hong Kong's proposal to introduce a common entrance examination in Hong Kong" prepared by the Legislative Council Secretariat

Declaration of interest

5. The Chairman declared that she was a teaching staff at the School of Law of the City University of Hong Kong ("CityU"), but she did not teach the Postgraduate Certificate in Laws ("PCLL") programme provided by CityU.

The Administration's views

6. Deputy Solicitor General ("DSG") said that as an employer and a stakeholder of the legal community, the Department of Justice ("DoJ") took a keen interest in the provision of legal education and training in Hong Kong. Noting that Mr Justice Patrick CHAN, Chairman of the Standing Committee on Legal Education and Training ("SCLET"), had already provided detailed information on the progress of the comprehensive study on legal education and training in Hong Kong ("the Study") to the Panel (LC Paper No. CB(4)825/14-15(03)), he, being a DoJ representative on the SCLET, was attending the meeting to listen to the views of deputations and members on legal education and training in Hong Kong and would relay these views to the SCLET for consideration as appropriate.

Deputations' views

Hong Kong Bar Association ("the Bar Association")

7. Mr Edward CHAN said that although the Bar Association did not see any need for a reform of the existing system and provision of legal education and training in Hong Kong, the Bar Association did not object to the SCLET carrying out a review on legal education and training in Hong Kong as a similar review was

Action

last conducted some 15 years ago. The Bar Association also did not have any comments on the progress of the Study set out in LC Paper No. CB(4)823/14-15(03) provided by the SCLET. However, as mentioned by the Bar Association at the last Panel meeting held on 16 December 2013, the Bar Association had great reservation about the proposal of the Law Society of Hong Kong ("the Law Society") of introducing a common entrance examination ("CEE") for law graduates to qualify as solicitors in Hong Kong. The Bar Association considered that the Law Society's proposal was unclear as to whether the CEE would be taken before or after the trainee contract and whether the PCLL programmes currently provided by CityU, the Chinese University of Hong Kong ("CUHK") and The University of Hong Kong ("HKU") 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.

8. Mr CHAN further said that the Bar Association disagreed with the Law Society's proposal that the Law Society, the Bar Association, CityU, CUHK and HKU should equally share the costs of the Study exceeding the HK\$1.5 million contributed by DoJ to fund the Study. However, the Bar Association was willing to contribute towards the costs of the Study at an amount determined by the Bar Association, should the costs of the Study exceed HK\$1.5 million.

Faculty of Law of HKU

9. Prof Michael HOR highlighted the following points detailed in the submission of the Faculty of Law of HKU (LC Paper No. CB(4)850/14-15(02)):

- (a) the proposal of introducing a CEE in Hong Kong as an alternative route to qualify as lawyers should be further discussed during and upon the completion of the Study;
- (b) to improve access to the HKU PCLL programme, the Faculty had launched a pilot scheme in the 2014 intake to interview borderline PCLL applicants and admit them after taking into account, amongst other things, their interview performance. The Faculty was closely monitoring the progress of these students admitted to the PCLL programme with a view to further enhancing and expanding the pilot scheme where appropriate; and
- (c) to avoid deserving students from being denied access to the HKU PCLL programme due to lack of financial means, the Faculty had made a request for 10 more Government-funded places. Although the Government, through the University Grants Committee, had

Action

provided funded places for the PCLL programmes at HKU, CUHK and CityU, in view of the demand for PCLL places, all three universities were allowed to provide self-funded places. The cost for self-funded places was three times or more of that for Government-funded places.

Faculty of Law of CUHK

10. Prof Christopher GANE highlighted the following points detailed in the submission of the Faculty of Law of CUHK (LC Paper No. CB(4)825/14-15(05)):

- (a) the Faculty had put in place measures to accommodate the extra demand for PCLL places in academic year 2016-2017 due to the "double cohorts" of Bachelor of Laws ("LLB") graduates in 2016;
- (b) to help improve access to the CUHK PCLL programme, the Faculty was currently reviewing the procedures for admission to its PCLL programme in order to, inter alia, provide admission interviews to borderline applicants and applicants who had been unsuccessful in their past applications for admission to PCLL; and
- (c) before significantly expanding PCLL places in Hong Kong, due regard would need to be given to ensuring that there was a close match between the number of PCLL graduates and the number of job opportunities for trainee solicitors and pupils in the market.

School of Law of CityU

11. Prof LIN Feng highlighted the following points detailed in the submission of the School of Law of CityU (LC Paper No. CB(4)825/14-15(06)):

- (a) decision on whether or not to expand PCLL places in Hong Kong by adopting a laissez-faire approach in the United Kingdom ("UK") whereby any qualified students who wished to enroll into a PCLL programme might find a PCLL place should not be made by the three law schools alone, but should be made by the whole society, including the legal profession; and
- (b) the proposal of introducing a CEE for entering into the legal profession should be considered under the Study to be conducted by the SCLET.

Action

Hong Kong Shue Yan University Alumni Association

12. Mr Sammy NG said that the three law schools should make known to PCLL applicants the criteria they adopted to select applicants for admitting into their PCLL programmes, having regard to the fact that law graduates who were not admitted into the PCLL programme ran by one of the three universities in the first time round would almost certain to be unable to become a lawyer in Hong Kong, as the chances of admission in the following year were considered minimal due to keen competition and the limited number of PCLL places.

13. Mr NG further said that similar to other professions, a CEE should be introduced to provide as an alternative route for law graduates to qualify as lawyers in Hong Kong and no ceiling should be set on the number of times a law graduate could sit for the CEE until he/she passed the CEE. Although the law schools would now consider offering PCLL places to borderline applicants and applicants who had previously been unsuccessful through interviews, amongst others, many law graduates considered such arrangement lacked objectivity and transparency, not to mention that the number of PCLL places set aside for these types of applicants was small. Mr NG pointed out that the fact that the number of lawyers sitting for the Overseas Lawyers Qualification Examination ("OLQE") administered by the Law Society had increased from some 20 a year in the past to about 300 a year in recent years was a testament of the inadequacies of the present PCLL system in Hong Kong. Although students with means could go overseas to attain law degrees and become qualified lawyers there, it would take them some 10 years if they wished to return to Hong Kong to practise law.

Law Students' Society of the CityU Students' Union

14. Miss Sharmaine CHAN said that as many law students aspired to become lawyers, apart from increasing PCLL places, consideration should also be given to exploring the feasibility of implementing a CEE as an alternative route for entering the legal profession.

HKU Law Alumni Association

15. Ms Elaine LIU said that the HKU Law Alumni Association welcomed the Study to be conducted by the SCLET, albeit it did not see any problem in the existing system and provision of legal education and training in Hong Kong which warranted a reform. Whilst the HKU Law Alumni Association was concerned about the implications of the proposed CEE on the legal profession, it would not make any comments on the proposal at the current stage.

Business and Professionals Alliance for Hong Kong

16. Mr Ricky SUN said that it was unfair that qualified law graduates could not get admitted into the PCLL programmes because of lack of PCLL places. Such a problem was exacerbated by the non-transparent criteria adopted by the three law schools in selecting applicants for admitting into their PCLL programmes. To address the aforesaid problems and to obviate the need of law graduates from taking the alternative route to practice as solicitors in Hong Kong through the OLQE administered by the Law Society, Mr SUN urged that a CEE be implemented in Hong Kong as an alternative route for law graduates to enter into the legal profession.

Discussion

Implementation of a CEE as an alternative route to qualify as lawyers in Hong Kong

17. Dr CHIANG Lai-wan said that the Democratic Alliance for the Betterment and Progress of Hong Kong welcomed the Study to be conducted by the SCLET which would cover, amongst others, the proposed implementation of a CEE as an alternative route to qualify as lawyers in Hong Kong. Noting that different stakeholders would be invited to give views for the Study, Dr CHIANG hoped that unsuccessful applicants for the PCLL programmes would be one of them. DSG undertook to convey Dr CHIANG's view to the SCLET.

18. Mr CHAN Kam-lam expressed support for introducing a CEE as an alternative route to qualify as lawyers in Hong Kong, so that law graduates who were denied admission to the PCLL programmes due to limited PCLL places could have another chance to become lawyers. Mr CHAN hoped that the three law schools and the two legal professional bodies could work together to ensure the high standards of the law graduates who passed the CEE.

19. Mr Paul TSE said that it was opportune to conduct a comprehensive review of legal education and training in Hong Kong to better meet the changing demands of the legal profession. Mr TSE further said that he was in favour of providing an alternative route for law graduates to qualify as lawyers in Hong Kong to better meet the varying circumstances of law graduates, such as those law graduates who attained their law degrees some years after graduating with non-law degrees. The Chairman expressed similar views. She further said that there was no cause for concern that the implementation of the CEE would produce more lawyers than Hong Kong could absorb, as PCLL graduates could look for jobs offered by overseas and Mainland employers.

Action

20. As becoming lawyers were reasonable expectation of law students, the Chairman said that a student of hers had asked whether law graduates could automatically be admitted into the PCLL programmes, as in the case of medical students who would automatically undergo internship training upon graduation so that they could obtain a licence to practise medicine upon successful completion of their internship.

21. Prof Michael HOR of the Faculty of Law of HKU said that analogizing the situation of medical students with that of law students might not be appropriate. Unlike applicants for admission into the PCLL programmes who could be local or overseas law graduates, only local medical graduates from the two universities would be provided internship training in public hospitals. Prof Christopher GANE of the Faculty of Law of CUHK also said that whilst medical graduates were primarily employed by the Hospital Authority, it was questionable whether DoJ could or should provide employment to all PCLL graduates which would be very costly and might undermine the independence of the legal profession which was crucial for the development of Hong Kong.

Review of the PCLL system

22. Mr Dennis KWOK urged the Bar Association and the Law Society, whose members were represented in the SCLET, to refrain from introducing any changes to the training and qualification required to enter the profession, until after the SCLET had completed the Study. In view of the various concerns over the existing PCLL system, such as the lack of PCLL places and the different standards of PCLL graduates at the three law schools, Mr KWOK asked whether, and if so, what measures would be taken by the three law schools to improve the PCLL system.

23. Prof Michael HOR of the Faculty of Law of HKU said that the quality of the students admitted into the PCLL programmes would be lowered should the PCLL places be significantly increased. In addition, the market for legal services might well be unable to absorb the additional PCLL graduates. As the SCLET would be conducting the Study to critically review the present system of legal education and training in Hong Kong, including its strengths and weaknesses, the Faculty of Law of HKU considered it best to await the findings of the Study before deciding on the way forward in addressing any weakness of the present PCLL system as identified. Prof HOR further said that the Faculty of Law of HKU was open-minded to any reform to the present system of legal education and training in Hong Kong as long as the reform was in the best interests of Hong Kong.

Action

24. Prof Christopher GANE of the Faculty of Law of CUHK echoed the views of Prof HOR. Prof GANE however pointed out that there were constraints on the number of PCLL students which the law schools could admit, as the PCLL programme, being a hands-on and skill-based programme, was labour-intensive.

25. Prof LIN Feng of the School of Law of CityU said that to enable more law graduates who had previously failed to get admitted into a PCLL programme to get admitted into the PCLL programme, the School of Law of CityU would set aside some PCLL places for these law graduates. To address the concern about the inconsistent criteria adopted by the three law schools in selecting PCLL applicants for admission into the PCLL programmes, Prof LIN said that consideration could be given to requiring PCLL applicants to pass a common admission test set by the three law schools. Regarding the concern over the different standards of PCLL graduates at the three law schools, Prof LIN said that feedback from the two legal professional bodies on the quality of these graduates was consistently satisfactory.

26. Mr CHUNG Kwok-pan said that youngsters who were admitted to LLB or equivalent programmes were generally of a good calibre. Hence, it was a waste of talents if many of the LLB graduates were denied access to the PCLL programmes due to limited PCLL places. Mr CHUNG urged the three law schools to provide more PCLL places as far as practicable.

27. Ms Emily LAU asked whether demand for lawyers was one of the considerations for determining the number of PCLL places by the three law schools.

28. Prof Christopher GANE of the Faculty of Law of CUHK said that it would be irresponsible of the law schools to expand PCLL places in the knowledge that the students would not have a realistic prospect of obtaining employment in the legal sector after graduation. Whilst demand for lawyers was one of the major considerations in determining the number of PCLL places, this was not the case for other law programmes which were designed to provide a broad-based education to students. In fact, students graduated with a law degree generally had good career prospects. Prof GANE further said that he was not very concerned if the number of applications for the PCLL programmes was dropping, as this was a proof that the message was gradually getting across to law students/graduates that getting admitted into the PCLL programme was not the only career path for law graduates.

29. Prof Michael HOR of Faculty of Law of HKU shared similar views with Prof GANE. Prof HOR further said that the number of students enrolled in double degree programmes (conferring an LLB and some other first degrees) had exceeded the number of LLB students.

Action

30. Prof LIN Feng of the School of Law of CityU said that unlike law students in many overseas jurisdictions, such as Australia and New Zealand, many of whom never anticipated they would become lawyers, this was quite different in the case of law students in Hong Kong many of whom aspired to become lawyers. In the light of the local context, Prof LIN reiterated the views that the society should as a whole decide whether the provision of PCLL places in Hong Kong should adopt a laissez-faire approach or continued to adopt a controlled approach.

Implementation of an alternative route for admission into the PCLL programme

31. Whilst agreeing that law graduates had many job opportunities, Mr Albert HO said that admitting into a PCLL programme was the only route for law graduates to become lawyers. Mr HO enquired whether the law schools would consider admitting those law graduates who had failed to gain admission into the PCLL programme in the past but who had subsequently attained certain number of years of legal work experience, say, through working five years at a law firm; or alternatively requiring these law graduates to pass an open examination administered by the law schools.

32. Prof Christopher GANE of the Faculty of Law of CUHK said that he personally considered Mr Albert HO's suggestion worth exploring. The suggestion could be considered in the context of the Study to be conducted by the SCLET.

33. Prof Michael HOR of the Faculty of Law of HKU said that those law graduates who had failed to gain admission into the PCLL programme in the past but who had subsequently attained certain number of years legal work experience were the kind of persons the Faculty of Law of HKU would like to capture under its pilot scheme on PCLL admission.

34. Prof LIN Feng of the School of Law of CityU said that the School of Law of CityU in principle did not oppose to the suggestion of providing an alternative route to PCLL for those law graduates who were unsuccessful in gaining admission to the PCLL programme in the past and had subsequently accumulated a specified number of years of practical legal experience through their employment.

35. Mr Edward CHAN of the Bar Association said that whilst he appreciated the concern expressed by members on the merits of an alternate route to the legal profession, the CEE was not the solution. The CEE could only test the theoretical knowledge of the candidates and could not replace the training of the PCLL which also covered some very practical aspects in preparation for the students to enter into the profession. However, he was in favour of widening the pool of students for admission to the PCLL such as asking the universities to consider admitting

Action

students to PCLL not merely on the basis of the scores of their degree examinations, but also to consider admitting those who had been working at law firms.

Curricula of law programmes

36. Mr CHUNG Kwok-pan said that in view of the close relationships between Hong Kong and the Mainland, there was a need for the three law schools to include more subjects on Chinese law in their law programmes.

37. Prof LIN Feng of School of Law of CityU said that although the curriculum of the LLB programme offered by CityU would concentrate on the essential core common law subjects as they applied in Hong Kong, students would also be introduced to the laws and legal system of Mainland China, for instance, one of the core subjects of the LLB programme was "Introduction to Chinese Legal System, as well as the relationship between the Chinese Constitution and the Hong Kong Basic Law. Prof LIN further said that if LLB graduates were interested in pursuing further studies in Chinese law, they could apply for the CityU Masters of Laws in Chinese Law programme.

38. Prof Michael HOR of the Faculty of Law of HKU said that HKU also provided a core module on "Introduction to Chinese Law" in its LLB programme. If LLB students wished to take more subjects on Chinese law, there were Chinese law electives for them to choose. Prof HOR further said that the HKU PCLL programme also offered an elective on "China Practice" which was an introduction to Mainland law and practices in property and land transactions, company law, mergers and acquisitions and joint ventures. Should law graduates wish to gain a deeper understanding and knowledge on Chinese law, the Faculty also offered a Masters of Laws in Chinese Law programme.

39. Prof Christopher GANE of the Faculty of Law of CUHK said that similar arrangements adopted by CityU and HKU for introducing its law students to Mainland law and legal system were adopted by CUHK for its law students. Prof GANE further said that the design of the curricular of the law programmes was very much influenced by the requirements of the legal profession. In fact, the legal profession had laid down a lot of topics that needed to be covered in a particular law programme.

40. Mr Sammy NG of Hong Kong Shue Yan University Alumni Association shared the views that with the increasing close ties between Hong Kong and the Mainland, there was a need for a more structured approach in providing law students/graduates with a deeper understanding of the laws and legal system in the Mainland. Mr NG pointed out that since 1990s, Hong Kong Shue Yan University had been co-organizing degree programmes on Chinese law with universities in

Action

the Mainland.

Arrangements of the Study

41. Mr Alan LEONG said that it was timely to conduct a comprehensive review on legal education and training in Hong Kong, as the last review was conducted some 15 years ago. Noting that DoJ had contributed HK\$1.5 million to fund the Study and having regard to the fact that the Bar Association did not agree to the Law Society's proposal of equally sharing the excess costs of the Study, Mr LEONG asked whether DoJ would be willing to foot the bill should the costs of the Study exceed HK\$1.5 million.

42. DSG responded that HK\$1.5 million should be enough to fund the Study, as the budget for the Study had been taken into account when DoJ considered the funding request. Should there be a need for additional funding support, it would be discussed by the SCLET. The DoJ would then consider further any funding request.

43. Mr Alan LEONG noted that the SCLET had appointed two professors to act as consultants for the Study, one of whom was Prof Julian Webb of Melbourne Law School of Australia and another was Prof Tony Smith, Pro Chancellor of Victoria University of Wellington, New Zealand. Mr LEONG further noted that the consultant for the last review on legal education and training in Hong Kong was from Australia. Mr LEONG enquired about the rationale of the SCLET to always invite legal experts from Australia and New Zealand to act as consultants for its reviews.

44. DSG responded that Mr Justice Suffiad, former Judge of the Court of First Instance of the High Court of Hong Kong, was also appointed by the SCLET to act as consultant for the present Study. Although Prof Julian Webb was from Australia, he had worked in the UK for many years before moving to Australia recently.

Conclusion

45. In closing, the Chairman said that the SCLET should engage more stakeholders, such as law students and employers, in its Study. The Panel would continue to monitor the review on legal education and training in Hong Kong by the SCLET.

IV. Review of solicitors' hourly rates

LC Paper No. CB(4)825/14-15(08) -- JA's paper on "Review of solicitors' hourly rates"

Briefing by JA

46. Deputy Judiciary Administrator (Operations) ("DJA(O)") briefed members on the latest progress of the review of the solicitors' hourly rates ("SHRs") being undertaken by the Judiciary, details of which were set out in the JA's paper (LC Paper No. CB(4)825/14-15(08)).

Views of the Law Society

47. Mr Nicholas David HUNSWORTH said that the Law Society welcomed the progress that had been made on the review of the SHRs, as the SHRs were last revised in 1997. The Law Society also welcomed that the Judiciary was considering the desirability of having a regular review of the SHRs.

48. Mr HUNSWORTH further said that the Law Society wished to stress that the reason why the Law Society supported the review of the SHRs was not that the review might impact on solicitors' income as was portrayed in the press and as inferred in paragraph 10 of the JA's paper that the level of legal fees to be incurred might increase should the SHRs be raised, as the fees which solicitors charged their clients were matters agreed to between the solicitors and their clients. Hence, whether the SHRs went up or down would not have any effect whatsoever on the fees which solicitors would charge their clients. The reason why the Law Society considered it necessary to review the SHRs was because SHRs for party to party taxation reflected in general the amount which a successful party in litigation could recover from the losing side. In the Hong Kong system where successful litigants should be entitled to recover a significant part of their legal costs from the unsuccessful litigants, it would be unfair to the successful litigants if the gap between the SHRs and the amount of money which the successful litigants paid to their lawyer(s) was large.

Discussion

49. Members noted a letter dated 27 April 2015 from Mr Dennis KWOK tabled at the meeting. In the letter, the Judiciary was requested to provide some further information additional to the JA's paper.

(Post-meeting note: The JA's replies to Mr Dennis KWOK's letter were issued to members vide LC Paper No. CB(4)1001/14-15 dated 15 May 2015).

Action

50. Mr Albert HO asked the following questions:
- (a) what methodology would be adopted in reviewing the SHRs;
 - (b) whether the Working Party on Review of Solicitors' Hourly Rates for Party and Party Taxation ("the Working Party") would examine whether the devising of the SHRs might be construed as an anti-competition conduct under the Competition Ordinance (Cap. 619); and
 - (c) whether the review of the SHRs would cover the handling of taxation applications by the taxing masters.
51. DJA(O) responded as follows:
- (a) one of the tasks of the consultant engaged by the Working Group was to recommend a methodology for reviewing the SHRs;
 - (b) devising the SHRs should not be construed as an anti-competition conduct under the Competition Ordinance, as the SHRs did not prescribe or seek to prescribe the charge out rate solicitors/fee earners actually adopted in charging their clients for service rendered in litigation. SHRs were taken to generally refer to the reasonable hourly rates in respect of reasonably competent solicitors/fee earners in different bands of seniority that were allowable on party and party taxation; and
 - (c) the review of the SHRs would not cover the handling of taxation applications by the taxing masters which were two entirely different matters. In handling each taxation application, taxing masters were not bound by the SHRs and they could exercise their discretion to adjust the legal costs awarded to the winning party based on the merits of each application.
52. Noting that the Law Society had commissioned a consultant to conduct review of the SHRs some two years ago and the findings and recommendations of the consultant had been submitted to the Judiciary, Mr Albert HO queried about the need for the Working Party to engage a consultant.
53. DJA(O) explained that given the various considerations as out in paragraphs 9 to 19 of the JA's paper and the possible ramifications of the review of the SHRs might have on the overall public interest in access to justice and on the different stakeholders in the community, the Working Party considered that any review of

Action

the SHRs should be objective and a structured approach should be adopted to tackle the matter. In this regard, the Working Party agreed that an independent consultant should be engaged to conduct an objective and comprehensive study to examine the subject and to make recommendations for the Working Party's consideration. DJA(O) further said that the consultant engaged by the Working Party would take into account the findings and recommendations of the consultant commissioned by the Law Society to review the SHRs in its study.

54. Noting that the Working Party planned to make final recommendations to the Chief Justice ("CJ") by the end of 2015 or early 2016, Mr Albert HO enquired why the Working Party needed such a long time to make final recommendations to CJ.

55. DJA(O) responded that the consultant was recently engaged by the Working Party. It was expected that stage 1 of the consultancy study would be completed around mid 2015 and stage 2 would start immediately afterwards.

Conclusion

56. In closing, the Chairman urged the Judiciary to expedite the review of the SHRs. The Chairman further requested JA to report to the Panel the results of the review when they became available.

V. Any other business

57. There being no other business, the meeting ended at 6:35 pm.

Council Business Division 4
Legislative Council Secretariat
6 July 2015