

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion

(position as at 18 November 2014)

**Proposed
timing for
discussion**

1. Law Reform Commission Report on Adverse Possession

The Law Reform Commission ("LRC")'s Sub-committee on Adverse Possession briefed members on the Consultation Paper on Adverse Possession on 26 February 2013. On 20 October 2014, the LRC released its Report on Adverse Possession.

December 2014

The Panel on Administration of Justice and Legal Services ("the Panel") will be briefed on the relevant LRC report in December 2014.

2. Law Reform Commission Report on Excepted Offences under Schedule 3 to the Criminal Procedure Ordinance (Cap. 221)

At the Panel meeting on 27 May 2014 to discuss the progress of the Administration's implementation of the recommendations made by the LRC, members raised concerns about the proposed repeal of the list of excepted offences in Schedule 3 to the Criminal Procedure Ordinance (Cap. 221) to enable the Court to have full discretion to impose an appropriate and adequate sentence, having regard to the gravity of the offence and the circumstances of the convicted person.

December 2014

The Panel will be briefed on the relevant LRC report in December 2014.

**Proposed
timing for
discussion**

3. Proposed creation of one Permanent Post of Deputy Principal Government Counsel ("DPGC") in the Civil Division of the Department of Justice ("DoJ")

The Administration proposes to invite the Panel's views on the proposed creation of a permanent DPGC post in DoJ, in place of an existing supernumerary DPGC post which will expire on 31 March 2015, to provide continued directorate support to the Secretary for Justice ("SJ") in taking forward the work required for the promotion and development of the wider use of mediation as a means of dispute resolution in Hong Kong and related matters. The plan is to submit the proposal to the Establishment Subcommittee in January 2015.

December 2014

4. Criteria for approving legal aid applications

Dr Hon Priscilla LEUNG proposes to discuss this item in the 1st quarter of 2015.

1st quarter of 2015

5. Draft Court Procedural Rules for the Competition Tribunal

Since the enactment of the Competition Ordinance (Cap. 619), the Judiciary has been making preparations for the setting up of the Competition Tribunal. The Tribunal is a superior court of record established under the Competition Ordinance having primary jurisdiction to hear and adjudicate on enforcement cases brought by the Competition Commission, follow-on private actions, alleged contravention of a conduct rule as a defence raised in proceedings before the Court of First Instance, as well as reviews of certain determinations of the Commission.

1st quarter of 2015

The Judiciary is preparing the procedural and other related rules for the Tribunal. These are subsidiary legislation. It will consult the Panel when ready.

**Proposed
timing for
discussion**

6. Reform of the current system to determine whether an offence is to be tried by judge and jury or by judge alone

At the Panel meeting on 22 April 2014, DoJ briefed members on the relevant background and the latest developments regarding the captioned issue. Members agreed to further discuss the issue when the parties concerned had prepared detailed submissions on the subject.

1st quarter of 2015

7. Mechanism for handling complaints against judicial conduct

In their joint letter dated 22 May 2013, Hon LEUNG Kwok-hung and Hon WONG Yuk-man requested to discuss the arrangement for Masters to handle court cases.

2nd quarter of 2015

The Panel was briefed by the Judiciary Administration ("JA") on the mechanism for handling complaints against judicial conduct at its meeting held on 23 July 2013. The Panel further received views from deputations on the mechanism for handling complaints against judicial conduct at its meeting held on 25 February 2014.

Having regard to the fact that the existing mechanism for handling complaints against judicial conduct has been working for some time, the Chief Justice has set up an internal working group (involving the Court Leaders) to review the mechanism, to see what improvements could be made. The JA will inform the Panel of the outcome of the review which is expected to be completed by end-2014.

8. Legal education and training in Hong Kong

At the Panel meeting held on 16 December 2013 to discuss The Law Society of Hong Kong ("the Law Society")'s proposal to introduce a common entrance examination in Hong Kong, members agreed to arrange a meeting of the Panel to receive views from the relevant stakeholders and members of the public, such as those who could not get admitted to the Postgraduate

To be advised by DoJ

**Proposed
timing for
discussion**

Certificate in Laws offered by local universities.

Dr Hon Priscilla LEUNG proposes to discuss the issue of "Legal education and training in Hong Kong" in the 1st/2nd quarter of 2015, and to invite relevant stakeholders, such as law professors and students, to give views on the matter.

9. Manpower and other support for the Judiciary

Whilst deliberating on the judicial manpower situation at various levels of court and long court waiting times at the Panel meeting on 16 December 2013, members expressed concern on the long court waiting times, the shortage of judicial manpower and the under-provision of courtrooms and office accommodation for the Judiciary.

2nd quarter of 2015

Members agreed to follow up with the Administration on issues relating to judicial manpower and courtroom facilities/office accommodation for the Judiciary at a future meeting.

10. Review on the implementation of Civil Justice Reform

Hon Dennis KWOK proposed to discuss the issue of "Review on the implementation of Civil Justice Reform" as the legal profession has identified problems and deficiencies since the Civil Justice Reform came into operation in April 2009 (LC Paper No. CB(4)784/13-14(01)).

2nd quarter of 2015

At the Panel meeting on 24 June 2014, members agreed that the issue be included in the list of items for discussion by the Panel.

**Proposed
timing for
discussion**

11. Operation of the Resource Centre for Unrepresented Litigants and the two-year pilot scheme to provide legal advice for Litigants in Person ("LIPs Scheme")

The Resource Centre for Unrepresented Litigants ("Resource Centre") was set up by the Judiciary in 2003 to provide assistance on court procedures to unrepresented litigants in civil proceedings in the High Court and the District Court. The purpose is to save the courts' time in explaining rules and procedures to the unrepresented litigants, thereby expediting the court process and lowering legal costs.

2nd quarter of 2015

Separately, the Home Affairs Bureau ("HAB") launched in March 2013 a two-year pilot scheme to provide free legal advice for litigants in person ("LIPs") to assist LIPs who have commenced or are parties to legal proceedings in the District Court or higher courts and have not been granted legal aid. The pilot scheme seeks to provide procedural advice to facilitate access to justice by LIPs and other parties involved.

HAB has submitted a paper to account for the first year of operation of the LIPs Scheme which was issued on 18 June 2014 (LC Paper No. CB(4)822/13-14(06)).

12. Procedure for the making of subsidiary legislation relating to the legal professional bodies

The Subcommittee on Solicitors (General) Costs (Amendment) Rules 2013 agreed that the Panel be requested to follow up with the Administration and related parties on the proper procedure for the making of subsidiary legislation relating to the legal professional bodies.

3rd quarter of 2015

13. Bilingual legislation drafting

The Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions agreed that the Panel be requested to follow

3rd quarter of 2015

**Proposed
timing for
discussion**

up with the Administration on the suggestion of setting up a panel of advisory language specialists to help ensure that there are no discrepancies between the English and Chinese defined terms in the drafting of legislation.

14. Further expansion of the Supplementary Legal Aid Scheme ("SLAS")

At the meeting on 10 July 2012, members agreed that the Panel should follow up with the Administration on proposals not supported for inclusion in SLAS, including the inclusion of claims against property developers by minority owners in respect of compulsory sales of building units and claims against sale of goods and provision of services; and related issues, such as raising the financial eligibility limits for SLAS as well as the Ordinary Legal Aid Scheme.

To be advised by
HAB

HAB submitted an information paper to the Panel on the progress of the review of SLAS which was issued on 18 June 2014 (LC Paper No. CB(4)822/13-14(06)).

15. Abolition of the common law offence of champerty

At the Panel meeting on 25 March 2014, members were briefed on the recent developments of the common law offences of maintenance and champerty in Hong Kong and the Administration's position in relation to the item. Members were generally of the views that the common law offences of maintenance and champerty were outdated and should be reviewed to better suit the present day circumstances. The Administration was urged to adopt a liberal approach in addressing the issue and come up with ways to enhance access to justice for the middle-income group.

To be advised by
DoJ

The Secretariat has received a letter from Hon LEUNG Kwok-hung dated 1 September 2014 requesting the Panel to discuss the issue of abolition of the common law offence of champerty again.

16. The Law Society's proposal to introduce a common entrance

**Proposed
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examination in Hong Kong

At the meeting on 16 December 2013, members received a briefing from the Law Society on its consultation (ran from 1 December 2013 to 14 February 2014) on the feasibility of implementing a common entrance examination as a means of admitting individuals to practice as solicitors in Hong Kong. After discussion, members agreed to keep in view the progress of the Law Society's consultation exercise and the Standing Committee on Legal Education and Training's comprehensive review, and would re-visit this subject in due course.

To be advised by
the Law Society

In September 2014, the Law Society informed the Panel that a total of 104 responses were received by the consultants appointed by the Law Society to conduct the consultation. In addition, the consultants conducted 11 interviews with stakeholders. The consultants have reviewed the responses, and are liaising with the Law Society on their findings and recommendations, which will in due course be considered by the various Committees with recommendations to the Council of the Law Society.

17. Adjustment to scale rates

Hon Dennis KWOK proposed to discuss the issue of "Adjustment to scale rates" (LC Paper No. CB(4)571/12-13(01)) as the rates for calculating legal costs for solicitors and their staff on party and party taxation ("scale rates") were last revised by the Registrar of the High Court in 1997.

To be advised by
JA

Following a review of the rates for calculating legal costs on party and party taxation ("scale rates"), the Law Society had in early 2013 formally endorsed the recommendations of the review report, including that the solicitors' hourly rates be raised to better reflect the current market conditions and that the scale rates should be adjusted annually according to an inflation-linked index.

In December 2013, the Judiciary informed the Panel that it considers that there are many important issues relating to the

Solicitors' Hourly Rates for taxation on a party and party basis. They would not only affect the work and interests of the solicitors but would also have a much broader impact on many stakeholders in the community at large in the overall context of access to justice. The Chief Justice has appointed a working party to review the matter and make recommendations.

An information paper on "Review of solicitors' hourly rates" provided by the JA had been issued to the Panel in December 2013.

18. Duty Lawyer Service for non-refoulement claims under the unified screening mechanism

Hon Dennis KWOK proposed to discuss the issue of the "Duty Lawyer Service for non-refoulement claims under the unified screening mechanism".

At the Panel meeting on 23 July 2013, members agreed that the issue be included in the list of items for discussion by the Panel.

As the implementation of the unified screening mechanism falls within the purview of the Panel on Security, Hon Dennis KWOK will follow up with the Chairman of the Panel on Security on including the provision of duty lawyer service for non-refoulement claims in the Panel on Security's discussion with the Administration on the unified screening mechanism and inviting members of the Panel on Administration of Justice and Legal Services to join such discussion.

19. Proposed amendments to Rule 4B(2) of the Solicitors' Practice Rules and Rule 8(4) of the Foreign Lawyers Practice

**Proposed
timing for
discussion**

Rules

The Law Society wrote to the Panel on 15 July 2013 inviting the Panel's views on its proposed amendments to Rule 4B(2) of the Solicitors' Practice Rules and Rule 8(4) of the Foreign Lawyers Practice Rules (LC Paper No. CB(4)911/12-13(01)).

To be advised by the Law Society

At the Panel meeting on 23 July 2013, members agreed that the Law Society be invited to brief members on the proposed amendments to Rule 4B(2) of the Solicitors' Practice Rules and Rule 8(4) of the Foreign Lawyers Practice Rules.

The Chief Justice has asked that the Law Society should first consult the Panel on the proposals before seeking his final approval.

20. Inclusion of the statutory Independent Police Complaints Council ("IPCC") under the purview of The Ombudsman

During the scrutiny of the IPCC Bill introduced into the Legislative Council ("LegCo") in July 2007, the relevant Bills Committee discussed the question of whether the statutory IPCC to be established under the Bill should be subject to the jurisdiction of The Ombudsman. The relevant Bills Committee had sought the views of The Ombudsman on the matter, who indicated that she had no objection in principle to having the statutory IPCC under her purview though it was recognized that the decision was ultimately one of policy.

To be decided by the Panel

At the Panel meeting held on 27 April 2009, members raised the issue of whether the statutory IPCC, to be established on 1 June 2009, should be subject to The Ombudsman's jurisdiction. Members agreed to bring up the issue after IPCC had been in operation for some time.

The Administration informed the Panel in writing on 23 September 2011 that it had consulted the Security Bureau on including the statutory IPCC under the purview of The Ombudsman. The Security Bureau advised that IPCC had

**Proposed
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discussed the proposal in May 2011. IPCC members raised unanimous concern that the proposal, if implemented, would undermine the image and public perception of IPCC being an independent oversight body established under the IPCC Ordinance (Cap. 604) if IPCC were subjected to the scrutiny of another statutory authority.

At the meeting on 28 November 2011, members agreed that the Panel should review the issue in future.

21. Prosecutorial independence

During the discussion on issues relating to prosecution policy and practice at the Panel meeting on 27 June 2011, some members were of the view that the existing arrangement of having SJ, a political appointee, to control prosecutions would undermine the public perception of the prosecutorial independence. They considered that the power to make prosecutions should rest with an independent Director of Public Prosecutions to ensure that prosecution decisions were free from political interference. Some other members, however, shared the Administration's view that it was SJ's constitutional responsibility to control criminal prosecutions as stipulated in Article 63 of the Basic Law and the control of prosecutions should continue to be rested with SJ.

To be decided by the Panel (Pending submission from the Bar Association)

Members noted that in the United Kingdom, a protocol between the Attorney General and the prosecuting departments was drawn up setting out when, and in which circumstances that the Attorney General would or would not be consulted on prosecution decisions and how the Attorney General and the Directors of the prosecuting departments would exercise their functions in relation to each other. The Administration was requested to consider whether a similar protocol should be adopted in Hong Kong. The Panel Chairman suggested that the Panel of the Fifth LegCo should be invited to consider as to how the issue should be followed up when the written submission of the Bar Association was available.

Legislative Council Secretariat
18 November 2014