

**立法會**  
**Legislative Council**

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LC Paper No. CB(4)1253/15-16  
(These minutes have been seen  
by the Judiciary Administration  
and the Administration)

**Panel on Administration of Justice and Legal Services**

**Minutes of meeting**  
**held on Monday, 23 May 2016, at 4:30 pm**  
**in Conference Room 2 of the Legislative Council Complex**

**Members present** : Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)  
Hon Dennis KWOK (Deputy Chairman)  
Hon Emily LAU Wai-hing, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Starry LEE Wai-king, JP  
Hon Alan LEONG Kah-kit, SC  
Hon LEUNG Kwok-hung  
Hon NG Leung-sing, SBS, JP  
Hon Steven HO Chun-yin, BBS  
Hon MA Fung-kwok, SBS, JP  
Hon Alice MAK Mei-kuen, BBS, JP  
Dr Hon CHIANG Lai-wan, JP  
Hon Alvin YEUNG Ngok-kiu

**Members absent** : Hon Albert HO Chun-yan  
Hon James TO Kun-sun  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon WONG Yuk-man  
Dr Hon Elizabeth QUAT, JP  
Hon TANG Ka-piu, JP

**Public officers** : Item III  
**attending**

Judiciary Administration

Mrs Erika HUI  
Deputy Judiciary Administrator  
(Operations)

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Ms Wendy CHEUNG  
Assistant Judiciary Administrator  
(Development)<sup>1</sup>

Item IV

The Law Reform Commission of Hong Kong

Mr Rimsky YUEN, SC, JP  
Secretary for Justice and  
Chairman

Ms Michelle AINSWORTH  
Secretary

Mr LEE Tin-yan  
Deputy Secretary

**Attendance by  
invitation** : Item III

The Law Society of Hong Kong

Mr Anthony LAI Man-chun  
Member of the Working Party on  
Interpreters

Ms Karen McClellan  
Member of the Working Party on  
Interpreters

Ms LAM Ka-lai  
Assistant Director, Practitioners Affairs

**Clerk in attendance** : Miss Mary SO  
Chief Council Secretary (4)<sup>2</sup>

**Staff in attendance** : Mr Stephen LAM  
Senior Assistant Legal Adviser 2

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Miss Joyce CHING  
Senior Council Secretary (4)2

Ms Jacqueline LAW  
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 no information paper had been issued since the last meeting.

**II. Items for discussion at the next meeting**

LC Paper No. CB(4)994/15-16(01) -- List of outstanding items for discussion

LC Paper No. CB(4)994/15-16(02) -- List of follow-up actions

2. Members agreed to discuss the following items at the next regular meeting scheduled for 27 June 2016 at 4:30 pm:

- (a) Measures for handling sexual offences cases and provision of screens for complainants in sexual offence cases during court proceedings; and
- (b) Reciprocal recognition and enforcement of judgments on matrimonial and related matters with the Mainland

3. Ms Emily LAU suggested to invite Rainlily and other concerned groups to give views on "Measures for handling sexual offences cases and provision of screens for complainants in sexual offence cases during court proceedings". Members agreed.

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**III. Terms and conditions of service of part-time interpreters in the Judiciary**

LC Paper No. CB(4)994/15-16(03) -- Judiciary Administration  
("JA")'s paper on  
"Remuneration for Part-time  
Interpreters Engaged by the  
Judiciary"

Briefing by JA

4. At the invitation of the Chairman, Deputy Judiciary Administrator (Operations) ("DJA(Operations)") briefed members on the remuneration for Part-time Interpreters ("PTIs") engaged by the Judiciary for the provision of interpretation services during court proceedings, details of which were set out in the JA's paper (LC Paper No. CB(4)994/15-16(03)).

Views of the Law Society of Hong Kong and JA's responses

5. Ms Karen McClellan said that the Law Society of Hong Kong ("the Law Society"), being a key stakeholder in the justice system and key defender of the rule of law in Hong Kong, had an ongoing interest in the proper provision of public interpretation services in Hong Kong that met international standards. As the provision of public interpretation services was an essential component of access to justice, especially in Hong Kong with its multi-linguistic heritage and multi-cultural diversity, the Law Society had set up a working party to study the provision of public interpretation services on Hong Kong. Some of the issues identified by the working party, which needed to be addressed, were as follows:

- (a) lack of interpretation services not only in court proceedings, but also in tribunal proceedings, disciplinary and regulatory proceedings, during investigation by law enforcement agencies and government departments, and the taking of instructions from persons who were seeking legal assistance;
- (b) lack of training of PTIs in regard, but not limited, to the understanding of legal and medical terminologies, court and law enforcement agencies procedures and rules, ethical issues and cultural, religious, ethnic, age and other sensitive issues, to better enable PTIs to provide interpretation services for, say, victims of sexual violence, children or persons with disabilities, in particular persons suffering from cognitive or psychiatric

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conditions, as well as persons of different faiths or of the opposite sex;

- (c) lack of accreditation and professional development of PTIs to allow for differentiation of skill sets and consequent pay grade differentials to encourage professionalism;
- (d) lack of supervision and maintenance of standards, discipline and continuing professional development;
- (e) lack of transparency in the recruitment, training and supervision of interpreters;
- (f) lack of suitably skilled interpreters to provide services to languages other than English, Cantonese and Putonghua;
- (g) limited access by legal professionals to the pool of interpreters on the Judiciary's list; and
- (h) the absence of public interpretation services in Hong Kong to provide interpretation services to all the stakeholders in the justice system.

6. Mr Anthony LAI supplemented that due to the lack of interpreters providing interpretation in foreign languages, the hourly rates demanded by these interpreters were generally higher than the hourly rates set by the Judiciary and the Legal Aid Department. To better enable Hong Kong to promote its legal and arbitration services to countries along the One Belt, One Road route, the Government should implement measure(s) to increase the supply of skilled interpreters in foreign languages, such as Pashto. Mr LAI pointed out that currently Pashto was not provided by PTIs engaged by the Judiciary.

7. DJA(Operations) responded that the PTIs engaged by the Judiciary were intended to provide interpretation services in foreign languages, where required, during court proceedings for administration of justice. Every year, the Judiciary, at appropriate intervals, through placing advertisements and through its website as well as that of the Civil Service Bureau, invited interested persons to apply to work as PTIs in foreign languages which were in demand. These PTIs were not staff employees of the Judiciary. Many of them had their own vocation and other engagements. To ensure that the quality of interpretation services provided by PTIs was of a satisfactory standard, training was provided to all new PTIs. For instance, court visits were arranged for all

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new PTIs. They also attended an induction class in real courtroom setting on court structure, court procedures and code of practice. They were also given handouts on relevant subjects including oath/affirmation of court interpreter and witness, specimen charges and brief facts, different nature of sentences in the judicial system, and legal terms commonly used in court proceedings. DJA(Operations) further said that the Judiciary was neither in a position to comment on the remuneration of PTIs engaged by other Government departments, nor on the supply of interpreters in Hong Kong in general.

8. In noting that the latest recruitment advertisement for PTIs did not cover such in demand foreign languages as Pashto and Nepali, Mr Anthony LAI of the Law Society hoped that the Judiciary would conduct more recruitment exercises of PTIs in a year and in more foreign languages to meet better the needs of court users.

Discussion

9. The Chairman drew members' attention to five submissions (English version only) tabled at the meeting (LC Paper Nos. CB(4) 1037/15-16 (01)-(05)) issued to members after the meeting on 24 May 2016).

10. Miss Alice MAK said that to attract more people to register as foreign language PTIs, the Judiciary should increase the hourly rate of PTIs. Miss MAK opined that the current hourly rate of \$287 was too low and demeaning to PTIs, as the Judiciary required that a foreign language PTI must possess a recognized university degree or an equivalent academic qualification, amongst others. Referring to one of the submissions (LC Paper No. CB(4)1037/15-16(04)) tabled at the meeting, Miss MAK noted that the Quebec Consulate in Hong Kong was currently offering a minimum of \$1,380 for each interpretation job which generally did not last more than two hours. Miss MAK further said that the Judiciary should introduce a mechanism to compensate those PTIs whose interpretation services were cancelled on the appointed day for providing the services.

11. DJA(Operations) responded as follows:

- (a) given the irregular demand for interpretation services for foreign languages as well as Chinese dialects and having regard to the variation regarding the duration of engagement, the Judiciary had been remunerating the PTIs generally on the basis of hourly rates for prudent use of public resources;

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- (b) the Judiciary reviewed the hourly rate on an annual basis. The hourly rate was adjusted having regard to the annual changes in the preceding year in the Consumer Price Index (A) ("CPI(A)") published by the Census and Statistics Department of the Government. Where the annual change or cumulative changes since the last adjustment reached an increase of 5% or more, the hourly rate would be adjusted according to the actual change(s) in the CPI(A). Any decrease in CPI(A) in a year would however not result in any immediate reduction in the hourly rates, but would be taken into account in an accumulative manner in subsequent year(s). On the basis of the aforesaid adjustment, the hourly rate for the Judiciary's PTIs was revised upward over the past few years, specifically by 8.79% in 2012, by 8.93% in 2014 and by 5.6% in 2015;
- (c) the current hourly rate of PTIs at \$287 was comparable to that of the full-time Court Interpreters ("CIs") at \$290. The CIs were staff employed by the Judiciary. They mainly provided interpretation in English and Cantonese in court proceedings. Some of them also provided interpreting service for Putonghua and a few Chinese dialects (other than Cantonese); and
- (d) PTIs assigned by the Judiciary to provide interpretation services in court proceedings would be remunerated a two-hour payment, if they were only informed of the cancellation of their services late, e.g. if they were already on their way to the court or they had actually arrived at the courts.

12. Miss Alice MAK further asked the following questions:

- (a) what was the number of CIs employed by the Judiciary;
- (b) what was the rationale for increasing the hourly rate of PTIs where the annual change in the CPI(A) or the cumulative changes in the CPI(A) since the last adjustment reached an increase of 5% or more; and
- (c) whether the pay adjustment mechanism for PTIs was also applied to CIs.

13. DJA(Operations) responded as follows:

- (a) about 130 CIs were currently employed by the Judiciary;

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- (b) she did not have information at hand as to why 5% had to be reached before pay adjustment could be made under the mechanism established in 2012; and
- (c) the pay adjustment mechanism for PTIs was not applied to CIs. CIs were civil servants and their pay adjustment was subject to the civil service pay adjustment mechanism. PTIs were the only freelancers engaged by the Judiciary.

14. Mr Dennis KWOK suggested requiring a party to court proceedings to compensate the PTI assigned by the Judiciary to provide interpretation service, if the party to court proceedings failed to give at least one day notice to the Judiciary for not appearing before the scheduled court hearing without valid reason(s).

15. DJA(Operations) responded that there might be difficulty in implementing Mr Dennis KWOK's suggestion mentioned in paragraph 14 above. DJA(Operations) reiterated that the PTIs assigned by the Judiciary to provide interpretation services in court proceedings would be remunerated a two-hour payment if they were informed late, for example when they were on the way to the court or they had arrived at the courts, that their services were not required for the hearings concerned.

16. The Chairman enquired whether the situation of interpretation services for court proceedings being cancelled on the appointed day was a frequent occurrence. DJA(Operations) responded that she did not have the requested information in hand. DJA(Operations) however said that the reasons for cancellation of interpretation services for a court hearing varied, such as when a witness was unable to attend due to sudden illness or more time was needed by the lawyers to compile/obtain materials for the hearing.

17. Ms Emily LAU said that it was incumbent upon the Administration to come up with measures to ensure the adequate supply of qualified PTIs in foreign languages to improve access to justice, in view of the fact that Hong Kong was a multi-racial community. The Chairman also said that the quality of interpretation services provided by the PTIs engaged by the Judiciary for court proceedings was integral to ensuring justice to parties to proceedings.

18. DJA(Operations) responded that the Judiciary would continue to strive to ensure that there was adequate supply of qualified PTIs in foreign languages for court proceedings to ensure justice to all in court proceedings. DJA(Operations) further said that to ensure that applicants were qualified for



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registering as foreign language PTIs, the Judiciary had been enlisting the assistance of the relevant Consulates in Hong Kong in assessing the eligibility of the applicants and/or referring suitable persons to apply as foreign language PTIs.

19. Mr TAM Yiu-chung noted from paragraph 4 of the JA's paper that as at March 2016, there were about 340 registered PTIs. In the light of this, Mr TAM asked about the wastage rate of these PTIs and whether the PTI register was updated regularly by the Judiciary. Mr TAM further asked about the means that would be taken by the Judiciary to engage PTIs who were proficient in the foreign languages of those countries which did not have Consulates or representatives in Hong Kong.

20. DJA(Operations) responded that to her understanding, many PTIs registered with the Judiciary were also engaged by Government departments for the provision of interpretation services. To ensure that there was adequate number of registered PTIs to meet demand for interpretation services for foreign languages in court proceedings, open recruitments for PTIs were conducted by the Judiciary at least annually. DJA(Operations) further said that if persons who were proficient with a certain foreign language were few in Hong Kong, the Judiciary would approach local universities for assistance. In extreme cases, the Judiciary would arrange for an overseas interpreter who was proficient in the foreign language required to come to Hong Kong to provide interpretation service in court proceedings.

21. Mr Dennis KWOK said that the Judiciary should review its procedure in assessing the eligibility of applicants as PTIs, as the quality of interpretation services provided by PTIs varied, even in the provision of interpretation in English and Chinese. Mr KWOK further said that the Judiciary should take into account the hourly rate paid by the market in determining the hourly rate of its PTIs to ensure that the quality of interpretation services provided was of a satisfactory standard.

22. DJA(Operations) responded as follows:

- (a) to ensure that applicants applying as foreign language PTIs were proficient in the foreign languages concerned, examiners who possessed greater proficiency in the foreign languages concerned were appointed to assist the Judiciary in assessing the oral and written entrance tests attended by the applicants. An applicant deemed to have met the eligibility requirements as a foreign language PTI would first be assigned simple jobs to test his/her performance. Only when the applicant had proven that he/she

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could perform well in more complicated jobs would he/she be made a registered PTI with the Judiciary; and

- (b) as the present remuneration arrangements for PTIs had been in use for some time, the Judiciary would review them and take into account members' views as appropriate.

JA 23. At the request of Ms Emily LAU and Miss Alice MAK, DJA(Operations) undertook to revert to members with an information note on the outcome of the Judiciary's overall review of the remuneration arrangements for the PTIs.

24. Ms Emily LAU said that to expedite increase in the number of foreign language PTIs registered with the Judiciary, the two legal professional bodies should consider writing to the Chief Justice ("CJ") direct on why there was an urgent need to do so.

**IV. Implementation of the recommendations made by the Law Reform Commission**

LC Paper No. CB(4)994/15-16(04) -- Law Reform Commission ("LRC") Secretariat's paper on "Implementation of the recommendations made by the Law Reform Commission"

LC Paper No. CB(4)994/15-16(05) -- Updated background brief on "Implementation of the recommendations made by the Law Reform Commission" prepared by the Legislative Council Secretariat

Briefing by LRC

25. Secretary for Justice ("SJ"), in his capacity as Chairman of LRC, briefed members on the progress of the implementation of the recommendations made by LRC by the relevant bureaux and departments ("B/Ds"), details of which were set out in the LRC Secretariat's paper (LC Paper No. CB(4)994/15-16(04)).

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Discussion

*Implementation of the LRC's recommendations*

*LRC Report on Class Actions (May 2012)*

26. Mr Dennis KWOK said that although some progress had been made by the relevant B/Ds in implementing the LRC's recommendations, some LRC's made many years ago, say, in 2000, had yet to be implemented. Regarding the proposals made in the LRC Report on Class Actions published in May 2012, Mr KWOK noted from paragraph 4(i) of the LRC Secretariat's paper that the Department of Justice ("DoJ") had established a cross-sector Working Group to study and consider the proposals of the report. The thirteenth meeting of the Working Group was held on 23 March 2016. In addition, a sub-committee of the Working Group ("Sub-Committee") had been formed to assist the Working Group on technical issues that might arise during its deliberations of the subject matter. The Sub-Committee held its sixteenth meeting on 22 April 2016. In view of the wide public concern over the implementation or otherwise of class actions in Hong Kong, Mr KWOK asked whether DoJ would consider publishing an interim report on its consideration of the proposals made in the LRC Report on Class Actions, such as the problems that needed to be addressed.

27. SJ responded that the issues being examined by the Working Group and its subcommittee mainly concerned technical aspects of class actions, such as the definitions of "consumers" and "consumer disputes", possible funding models of class actions, the possibility of abuse of class actions and the safeguards to be provided in case of abuse of class actions. The Working Group was well aware of different opinions on the introduction of a class actions regime in Hong Kong. The Administration would map out the way forward as soon as practicable in the light of the recommendations to be made by the Working Group.

*LRC Report on the Regulation of Debt Collection Practices (July 2002)*

28. Mr TAM Yiu-chung noted that the recommended review of the then limitations imposed on the collection and use of "positive credit data" was implemented without legislation by the Privacy Commissioner for Personal Data in the Code of Practice on Consumer Credit Data 2002. The Report's other recommendations were however rejected by the Administration in September 2005. As the Administration's decision not to implement the LRC's of introducing a statutory licensing scheme for debt collection agencies, amongst others, was made more than 10 years in 2005, Mr TAM asked whether

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the LRC would conduct a fresh study on the need of regulating debt collection practices.

29. SJ responded that topics for study by the LRC were normally put forward by himself and/or CJ. Although in 2005 the Report was largely rejected by the Government, the topic could be referred back to the LRC for further discussion if he and/or CJ considered it appropriate. Since 2005, he and CJ had discussed whether there was a need to ask the LRC to again review the adequacy of the existing law that governed the way in which creditors, debt collection agencies and debt collectors collected debts in Hong Kong outside the court system, and to recommend such changes in the law as might be thought appropriate. As there was no evidence that conspicuous worsening of the debt collection practices in Hong Kong had materially worsened, he and CJ decided that there was no need to ask the LRC to conduct a fresh review on the subject matter for the time being. However, the LRC might be asked to conduct a fresh review if there were new developments in the debt collection practices in Hong Kong or elsewhere.

LRC Report on Stalking (October 2000)

30. Responding to Mr TAM Yiu-chung's enquiry on when the Administration would implement the LRC's recommendations on stalking, SJ said that the relevant B/D, i.e. the Constitutional and Mainland Affairs Bureau, currently had no plan to enact legislation to change the law in this area due to the divergent views on the matter in the community.

LRC Report on Arrest (November 1992) and LRC Report on Substitute decision-making and advance directives in relation to medical treatment (August 2006)

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31. Ms Emily LAU expressed concern about the long time taken by the relevant B/Ds to implement LRC's recommendations. A case in point was that although the LRC Report on Arrest was published in November 1992, the recommendations made in the Report had yet to be implemented in full. Another example was that although the medical sector as well as many members of the public were supportive of the concept of advance directives in relation to medical treatment, promoting advance directives through legal means as recommended in the LRC Report on Substitute Decision-Making and Advance Directives in Relation to Medical Treatment published in August 2006 had yet to be implemented.

32. SJ responded that more than half of the endorsed recommendations made in the LRC Report on Arrest had been implemented by the Security

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Bureau ("SB"). SB was still reviewing some of the proposals in the light of the changes in United Kingdom ("UK")'s Police and Criminal Evidence Act 1984 and local enforcement experiences with a view to determining the way forward. As regards promoting advance directives through legislative means, SJ said that the relevant B/D, i.e. the Health and Welfare Bureau, considered it more advisable to do so when there was greater degree of awareness and consensus over the use of advance directives in the community.

33. SJ further said that the fact that LRC recommended certain proposals did not necessarily mean that the relevant B/Ds or the general public would agree with its views. For instance, although the LRC considered that repealing excepted offences as listed in Schedule 3 to the Criminal Procedure Ordinance (Cap 221) was a technical amendment which would meet with support from the community, some members of this Panel as well as some non-governmental organizations had a reservation about the proposal. This was that if implemented, the repealing of excepted offences would give a wrong message to society that rape and indecent assault were no longer serious offences, as imposing suspended sentences for these excepted offences would be an option for the court. Another example was that although the LRC recommended that a system should be put in place to regulate charities and enhance their transparency, such a proposal received divergent feedback during the consultation period. If there was a lack of consensus in the community on a certain LRC proposal, it would be difficult for the relevant B/Ds to implement the proposal. SJ stressed that the LRC spent a lot of time and resources in coming up with their reports, and the LRC did not want to see all this go to waste and the reports gather dust. However, the LRC could not prevent B/Ds and stakeholders from holding different views. SJ added that since taking up his office as SJ in 2012, he, in his capacity as Chairman of LRC, had introduced a system whereby the implementation progress of the LRC's recommendations was made a standard discussion item at the meetings of LRC and the implementation status of the LRC's recommendations was also uploaded onto the LRC's website for public monitoring.

34. In noting that some of the LRC's recommendations met with opposition from the relevant stakeholders, Ms Emily LAU asked whether the LRC had consulted the views of the relevant stakeholders in coming up with their recommendations on law reform.

35. SJ responded that a topic which the LRC had decided to study would either be studied by the LRC (with the assistance of the LRC Secretariat) or by a sub-committee formed under the LRC. Although the LRC and its sub-committees issued papers for public consultation, it was not necessarily the case that all views could be collected during that first round of public

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consultation conducted by the LRC, and sometimes different views emerged after the publication of the LRC's final report, which was something beyond the LRC's control. SJ added that this might arise because the LRC would focus on a topic concerned from the legal perspective, whereas when a topic was open for subsequent public consultation, other factors or considerations might emerge.

Consultation paper on Third Party Funding for Arbitration

36. Mr Dennis KWOK asked when the Administration would introduce the legislation to permit third party funding for arbitration taking place in Hong Kong under Hong Kong law, so as to enhance Hong Kong's competitive position as an international arbitration centre.

37. SJ responded that consideration was being given to amending the Arbitration Ordinance, and it was planned that the exercise could be completed within the current term Government.

*Work of LRC*

38. Mr Dennis KWOK said that SJ had mentioned in the previous meetings of the Panel that he would come up with a decision during his tenure of office on whether or not to staff LRC with full-time commission members as found in the UK and other common law jurisdictions. In this regard, Mr KWOK asked SJ when he would come up with a decision on making LRC into a full-time body staffed with full-time commission members and professional staff.

39. SJ responded that after having studied the practices adopted by LRCs in other jurisdictions, a paper would be submitted to the LRC within the current term Government on ways to improve the work of LRC, including ways to better follow up on the LRC's recommendations.

Conclusion

40. The Chairman concluded that the Panel would continue to follow up on the progress of the implementation of the recommendations made by LRC by the relevant B/Ds in the next legislature session.

**V. Any other business**

41. There being no other business, the meeting ended at 6:03 pm.

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Council Business Division 4  
Legislative Council Secretariat  
18 July 2016