

立法會

Legislative Council

LC Paper No. CB(4)890/17-18

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Ref : CB4/PL/AJLS

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Wednesday, 20 December 2017, 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 Wing-hang (Deputy Chairman)
Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, GBS, JP
Hon CHAN Kin-por, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon CHAN Chi-chuen
Dr Hon Fernando CHEUNG Chiu-hung
Hon Martin LIAO Cheung-kong, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung

Members attending : Dr Hon Elizabeth QUAT, BBS, JP
Hon Jeremy TAM Man-ho

Member absent : Hon YUNG Hoi-yan

**Public officers
attending**

: Agenda item III

Mr Rimsky YUEN, SC
Secretary for Justice
Chairman, Law Reform Commission of Hong Kong

Ms Michelle AINSWORTH
Secretary
Law Reform Commission of Hong Kong

Mr Byron LEUNG
Deputy Secretary
Law Reform Commission of Hong Kong

Agenda item IV

Miss Emma LAU
Judiciary Administrator

Mrs Erika HUI
Deputy Judiciary Administrator (Operations)

Mrs Connie NGAN
Assistant Judiciary Administrator (Corporate Services)

**Attendance by
invitation**

: Agenda item IV

Hong Kong Bar Association

Mr Graham HARRIS, SC

Clerk in attendance : Mr Lemuel WOO
Chief Council Secretary (4)6

Staff in attendance : Mr YICK Wing-kin
Senior Assistant Legal Adviser 2

Ms Macy NG
Senior Council Secretary (4)6

Ms Emily LIU
Legislative Assistant (4)6

Action

I. Information papers issued since the last meeting

- (LC Paper No. CB(4)370/17-18(01) - Administration's letter dated 13 December 2017 on its review of non-commencement of ordinances/certain provisions of ordinances)

Members noted the above paper issued since the last meeting.

II. Items for discussion at the next meeting

- (LC Paper No. CB(4)365/17-18(01) - List of outstanding items for discussion

LC Paper No. CB(4)365/17-18(02) - List of follow-up actions)

2. Members agreed to discuss the following items at the next regular meeting to be held on 22 January 2018 –

- (a) Proposed creation of a permanent post of Deputy Principal Government Counsel in the International Law Division of the Department of Justice ("DoJ"); and
- (b) Implementation of the Law Reform Commission of Hong Kong ("LRC")'s Report on Enduring Powers of Attorney: Personal Care – Continuing Powers of Attorney Bill.

3. The Chairman suggested discussing issues relating to the future development of the legal profession and its impacts on the legal services to the public in Hong Kong and including the item in the Panel's list of outstanding items for discussion. Members raised no objection.

III. Enhancing the operation model for the Law Reform Commission in Hong Kong

- (LC Paper No. CB(4)365/17-18(03) - Administration's paper on enhancing the operation model for the Law Reform Commission in Hong Kong
- LC Paper No. CB(4)365/17-18(04) - Paper on the operation model for the Law Reform Commission of Hong Kong prepared by the Legislative Council Secretariat (background brief))

4. At the invitation of the Chairman, Secretary for Justice ("SJ") briefed members on the preliminary outcome of the study conducted by LRC to consider various options to enhance the efficiency and operation of LRC as set out in the Administration's paper. SJ advised that, while maintaining the current Commission and sub-committee structure but enhancing the LRC Secretariat support (i.e. Option 2 as set out in paragraphs 36 to 46 of the paper) was LRC's preferred option, members' views on the various options and LRC's preliminary conclusions from the study were welcomed to assist DoJ in considering the way forward.

Options on the way forward regarding the structure and operations of the Law Reform Commission of Hong Kong

5. The Deputy Chairman, Mr Alvin YEUNG and Dr Fernando CHEUNG welcomed Option 2 as a first step to enhance the operations of LRC. However, they all agreed that a fully independent statutory law reform body (i.e. Option 3 as set out in paragraphs 47 to 52 of the paper) was the ideal option and that should be the long-term goal for the development of LRC.

6. Mr Holden CHOW considered that, given the huge costs involved in establishing a fully independent statutory law reform body, Option 2 should be adopted to enhance the LRC Secretariat support.

7. The Chairman indicated her support on Option 2 for it was a progressive approach to enhance the operation model of LRC. She pointed out that a fully independent statutory law reform body might choose to consider subjects which were more academic or legalistic in nature and might not address people's livelihood or issues of public interests. It was also questionable whether the

Administration would be keen to implement the recommendations made by an independent law reform body.

Enhanced Secretariat support to the Law Reform Commission of Hong Kong

8. The Deputy Chairman asked the Administration to elaborate on the staffing proposal to enhance the LRC Secretariat support. In reply, SJ advised that the current proposal was to enhance LRC's resources to add more lawyers and supporting staff to LRC. With more lawyers in the LRC Secretariat, dual secretaries could be allocated instead of a single secretary as had long been the case. This would enable the division of labour between the two secretaries in providing support to the sub-committee.

9. Mr Holden CHOW noted that by operating through volunteers, LRC and its sub-committees were enabled to tap into different areas of expertise (legal and otherwise). He asked whether the Administration had explored hiring more in-house staff with different areas of expertise under Option 2 for the same benefit.

10. SJ said that as it was not possible to envisage in advance the subjects which would be considered in future by LRC and the relevant expert/professional knowledge required, and that to hire a host of in-house staff with different areas of expertise in the LRC Secretariat would incur huge cost possibly to no avail. However, in the longer term, consideration might be given to hiring in-house staff with specialized knowledge/expertise if that was found to be of particular value to the work of LRC. To illustrate, SJ pointed out that there was an emerging trend in certain common law jurisdictions (such as England) where the law reform bodies would consider the cost-effectiveness and economic impacts of a law reform proposal at an early stage. As such, in-house economists were recruited to provide specialist advice.

11. SJ added that if and when appropriate, experts or consultants (whether lawyers, academics or otherwise) might also be engaged to provide assistance to LRC or its sub-committees on other specific issues. The Chairman supported that a cross-disciplinary approach be taken by LRC in considering law reform proposals (especially for topics such as class actions) and, in particular, in assessing their cost effectiveness.

Engaging outside research bodies, practitioners or academics to assist the Law Reform Commission of Hong Kong

12. The Chairman declared that she was teaching at the School of Law of the City University of Hong Kong. She welcomed the Administration's proposal to explore the feasibility of engaging outside research bodies, including law

schools, to conduct research studies on topical issues for LRC if and when appropriate and if resources permitted.

13. Mr Martin LIAO noted that The Law Commission of Ontario ("LCO") in Canada and the Tasmania Law Reform Institute ("TLRI") in Australia were two examples of law reform bodies forming partnerships with universities and/or legal professional bodies. He asked whether the Administration had made reference to their experiences when considering the proposal of engaging outside research bodies to assist LRC.

14. In response, SJ said that LRC had considered the experience of different law reform bodies in its review. He pointed out that, unlike LCO and TLRI where the law reform bodies had close cooperative and collaborative relationships with law schools and other legal professional bodies, LRC's current proposal was to engage expert practitioners or academics for advice on specific topical issues, in particular the more complicated ones if and when appropriate. SJ added that the proposed arrangement was similar to DoJ's current practice of briefing out certain criminal and civil cases to private counsel for legal advice.

15. Mr Martin LIAO asked how LRC could ensure that the studies conducted by outside research bodies or experts would provide it with a macroscopic perspective rather than a limited legalistic or academic view. In reply, SJ said that the study reports would be examined and considered by the relevant LRC sub-committee and/or LRC itself. If necessary, members of LRC might seek clarification and elaboration on the content of the study reports from the research bodies.

Topics considered by the Law Reform Commission of Hong Kong

16. The Chairman opined that, in referring subjects to LRC for consideration, SJ or the Chief Justice ("CJ") should give due regard to whether they were relating to people's livelihood. She considered that law reform proposals on such topics would be of general interest to the public, would attract less political controversies and hence could be taken forward for implementation more smoothly.

17. In response, SJ referred members to paragraph 18 of Annex 1 of the Administration's paper on the factors which would usually be considered by SJ and CJ in considering whether a subject was suitable for referral to LRC. SJ advised that, if a subject relating to people's livelihood involved legal issues, there was no reason in principle why the subject should not be considered by LRC. He also assured members that public interest would certainly be an

important consideration in the choice of subjects to be referred to LRC, as public funds were involved.

18. Dr Fernando CHEUNG pointed out that law reform should be a continuous undertaking to be conducted systematically in order to keep the laws of Hong Kong up-to-date and in pace with social development. In that respect, Dr CHEUNG considered LRC's roles and functions limited as LRC could only consider law reform projects referred to it by SJ or CJ and where the subject did not fall readily under the responsibility of one particular government bureau. He considered that LRC should not just rely on the referral by SJ and CJ, but should enlist the participation of community groups/organizations, academics and the Legislative Council ("LegCo") Members on its own to gather subjects for consideration which would be more relevant to public's concerns.

19. In response to Dr CHEUNG, SJ clarified that the roles of LRC were not limited to the three areas specified in paragraph 7 of the Administration's paper, which only highlighted the particularly valuable roles which LRC could play. While it was SJ or CJ who decided which aspects of the law would be referred to LRC for consideration, the subjects would normally be chosen from suggestions made by LRC members, the legal profession, the public at large, the Administration, etc. He said that one example was the law reform proposal to remove the sentencing restrictions in the Criminal Procedure Ordinance (Cap 221), which was initiated by a legal professional body with the assistance of law academics of a university.

Implementation of the Law Reform Commission of Hong Kong's recommendations

20. The Deputy Chairman pointed out that many recommendations made by LRC in the past had not yet been implemented. He expressed concerns that just expediting the work of LRC through enhancing the LRC Secretariat support would be meaningless if the Administration did not take timely action to implement the LRC's recommendations. Mr Alvin YEUNG shared his concern and asked about the measures to address the problem.

21. In response, SJ said that while it was for a government bureau to decide whether to implement relevant LRC recommendations under its purview having regard to various factors, some measures had been introduced for monitoring the progress of their implementation in recent years. A set of guidelines was issued by the Administration in October 2011 with the purposes of improving the timeliness on bureaux/departments' responses to published LRC reports. Relevant bureaux/departments having policy responsibilities over the recommendations made in LRC reports were required to provide a detailed

public response setting out which recommendations they accepted, rejected or intended to implement.

22. In addition, SJ said that an annual report would be submitted to LegCo on the implementation progress of LRC's recommendations, which would also be uploaded to the LRC website for public's inspection. Implementation was also a regular agenda item at each LRC meeting for LRC members to monitor the implementation progress of LRC's recommendations.

23. SJ pointed out that the law reform process comprised three inter-related stages, i.e. the LRC's work stage, public consultation stage and implementation stage. With enhanced staff resources in the LRC Secretariat, LRC would be able to follow up more proactively with the relevant government bureaux or departments to provide assistance on issues relating to the implementation of law reform proposals. The Administration had also explored the possibility of involving relevant bureaux/departments in the law reform process at an early stage through having their staff sitting on the relevant sub-committee of LRC. In this way, LRC would be able to take any policy considerations regarding a law reform proposal into account from the start, thereby increasing the chance for implementation of LRC's recommendations.

Work progress of introducing the Archives Law

24. The Deputy Chairman asked about the timetable of issuing the consultation paper on the Archives Law by LRC. SJ advised that the relevant sub-committee of LRC was considering the first draft of the relevant consultation paper which would then be submitted to LRC for further consideration. The consultation paper would be published after it had been cleared by LRC. SJ advised that the Administration recognized the importance of records management and a sub-committee had therefore been set up under LRC to study the issue.

25. SJ further said that although some issues appeared to be simple, the time required to conduct the research work could be considerable, issues on the Archives Law and gender recognition were good examples. Therefore, it was proposed to strengthen the resources of the LRC Secretariat and brief out the research work to shorten the time taken by LRC to issue its consultation papers.

26. In response to the Chairman's enquiry, SJ advised that concrete proposal on the resources required for additional staff in the LRC Secretariat and, if appropriate, briefing out of research study projects, would be made after consolidating the views of the Panel, LRC and the relevant government bureau. He assured members that the Panel would be consulted again on the concrete proposal as appropriate.

IV. Security in court buildings

(LC Paper No. CB(4)365/17-18(05) - Administration's paper on security in court premises

LC Paper No. CB(4)365/17-18(06) - Paper on security in court buildings prepared by the Legislative Council Secretariat (background brief))

27. At the invitation of the Chairman, Judiciary Administrator ("JA") briefed members on the latest measures to enhance security in court buildings/premises after reviewing the security situation in recent months. Further to the increased Police presence in court buildings and the enhanced security measures at the Family Court ("FC"), JA informed members that the next enhanced security measures would be implemented in the High Court ("HC") in early 2018 where security screening of persons accessing the courtrooms in the HC Building would be conducted as a pilot scheme ("the pilot scheme"). Taking into account the situations of other existing court buildings, different forms of security screening would also be introduced progressively where this was practicable.

28. The Chairman invited Mr Graham HARRIS to present the views of the Hong Kong Bar Association ("the Bar Association"). In gist, the Bar Association welcomed the Judiciary's measures to enhance security in court buildings as the safety of all court users was of paramount importance. He supplemented that security screening had been implemented in the court buildings of some overseas jurisdictions, such as the United Kingdom, for many years. Nevertheless, he urged that when introducing enhanced security measures in the HC Building, the Judiciary should avoid any disruptions to court operations, in particular possible delays for accessing the courtrooms.

Security measures at the High Court Building

29. Given the long waiting times for lifts in the HC Building at present, the Chairman expressed worry that the pilot scheme would further delay court users in gaining access to the courtrooms. She urged the Judiciary to enhance the elevators' efficiency as well as the efficiency of the screening methods. The Deputy Chairman also expressed concern that the pilot scheme might cause inconvenience for court users, particularly during the peak hours in the early morning. He suggested that, in addition to security screening, security guards should be stationed on every floor with courtrooms to provide immediate support, if necessary.

30. In response, JA explained that the design of the HC Building's lifts had not envisaged the present security needs. Nevertheless, the Judiciary had made the request via the Electrical and Mechanical Services Department to the lifts' manufacturer in Japan for proposals to improve the lifts' operational efficiency. On the other hand, under the pilot scheme, the Judiciary had planned to deploy additional security guards and installing archway metal detectors to expedite the security screening process.

31. Mr Alvin YEUNG noted that for court users going to 1/F to 14/F of the HC Building, security screening would be conducted on G/F, while those going to the courtrooms at LG4/F would be screened on LG4/F. He suggested that, to minimize the inconvenience to court users, persons who had gone through the security screening on LG4/F should be allowed access to court rooms from 1/F to 14/F as well. Mr YEUNG also suggested that, in the long run, the Judiciary should consider issuing passes for frequent users such as legal representatives, staff of law firms, etc. to access those floors and only requiring members of the public to go through security screening.

32. In reply, JA explained that as there were only three courtrooms on LG4/F of the HC Building and phase 1 of the pilot scheme would not cover LG3/F to G/F, there was a need to conduct screening arrangements for users accessing 1/F to 14/F and those accessing LG4/F separately. She added that the Judiciary would consider providing a dedicated passageway to facilitate the security screening of frequent court users, such as legal representatives, expeditiously. Consideration would also be given to the timing for extending the security screening to users of the registry floors from LG3/F to G/F of the HC Building, as phase 2 of the pilot scheme.

33. JA informed members that the Judiciary would liaise with the two legal professional bodies and DoJ to ensure the smooth implementation of the enhanced security measures in HC. Furthermore, the Judiciary would continue to review and enhance the security measures at HC having regard to the operational experience gained from the pilot scheme.

Police presence at court buildings

34. Dr Junius HO considered it inappropriate to replace part of the Police's constabulary establishment in the Magistrates' Courts with security guards to perform crowd control duties since April 2009. With a view to addressing the concerns about court security, more police officers should be deployed at the Magistrates' Courts to perform crowd control duties.

35. In reply, JA explained that the deployment of police officers in court buildings was a matter for the Police. Having said that, the Judiciary had

strengthened the liaison with the Police at various levels to discuss about the security requirements in court buildings/premises. As a result, the Police presence at the court buildings including HC, District Court and FC had been enhanced. The Judiciary would continue to discuss and review the security arrangements in court buildings/premises with the Police.

36. The Deputy Chairman noted with concern that, in the past, individual judges had reported being threatened by some persons who might not like the judgments they handed down. He was concerned about the personal safety of judges inside and outside court buildings. JA advised that the Judiciary attached great importance to the safety of judges and judicial officers and had put in place various measures to enhance the security of court premises. If there was any judge facing personal threats arising from their judicial duties, the Judiciary would report to the Police for investigation and necessary actions at no delay. Mr Graham HARRIS of the Bar Association supplemented that any person who threatened a judge, whether inside or outside a courtroom, might be liable to the offence of contempt of court.

Security measures at the Family Court

37. Citing an incident in May 2017 in which a man stabbed his ex-wife prior to an alimony-related hearing at FC, Dr Elizabeth QUAT expressed concerns about the inadequate security measures for the FC premises. She considered that, given the antagonism between wives and their husbands in the FC cases, some even were victims of domestic violence, separate passageways for accessing the courtrooms should be provided to minimize their encounters.

38. JA replied that having regard to the situation facing users of FC, the Judiciary had been enhancing the security arrangements for FC since 2012. Since November 2017, before court users entered the courtrooms in FC, they needed to undergo security screening using handheld metal detectors. JA said that the enhanced security screening measures had been implemented smoothly without causing any adverse impact on the court operations in FC. She also advised that victims in domestic violence cases could apply to the court for the adoption of special measure(s), such as provision of special passageways, if and when necessary.

39. In response to Mr Holden CHOW's enquiry, JA explained that the enhanced security measures implemented (e.g. bag inspection and security screening by using hand-held metal detectors) were broadly in line with the practices adopted in many overseas court premises, to which the Judiciary had made reference. However, owing to the physical constraints in the layout of certain court premises, the measures to enhance security in different court premises might need to be adjusted accordingly.

(At 6:24 pm, the Chairman suggested and members supported extending the meeting for 15 minutes to 6:45 pm.)

Security measures at the proposed Judicial Complex for the High Court and Judicial Complex for District Court

40. The Chairman and Dr Junius HO considered that in designing the physical layout of the proposed Judicial Complex for HC ("JCHC") and Judicial Complex for District Court ("JCDC") as announced in the Chief Executive's 2017 Policy Address, various security measures to be provided in the buildings concerned should be taken into account thoroughly.

41. The Chairman suggested that different sizes of courtrooms should be provided so that more controversial cases might be heard in larger courtrooms which could accommodate more members of the public to improve the court operational efficiency and user convenience.

42. Dr Elizabeth QUAT expressed that the Judiciary should pay due regard to the protection of victims of sexual offence cases by providing relevant security facilities such as protective screens and special passageway in the proposed JCHC and JCDC to shun any embarrassment or humiliation caused to such victims.

43. Dr Junius HO was of the view that well-designed staircases might be provided for court users to gain access to the courtrooms without taking the lifts so as to reduce the lift waiting times. He also suggested that consideration should be given to televising court hearings to reduce the number of persons who needed to access the courtrooms.

44. The Chairman doubted about the practicality of televising court proceedings since justice in the judicial proceedings was of paramount importance. JA said that televising court proceedings was a complicated issue which involved more than security considerations and had to be considered with prudence and care. For the design of the new law court buildings, the Judiciary would take a holistic and visionary approach to work out the design for addressing the needs of different court users and she assured members that members' views expressed regarding the security measures for the proposed JCHC and JCDC would be taken into consideration in the detailed design of the respective buildings.

V. Any other business

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

Council Business Division 4
Legislative Council Secretariat
9 April 2018