

立法會

Legislative Council

LC Paper No. CB(4)445/18-19
(These minutes have been seen
by the Administration)

Ref : CB4/PL/AJLS

Panel on Administration of Justice and Legal Services

Minutes of special meeting held on Monday, 29 January 2018, at 4:45 pm in Conference Room 1 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 Holden CHOW Ho-ding
Hon YUNG Hoi-yan
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung

Members attending : Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, SBS, JP
Hon WU Chi-wai, MH

Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Han-pan, JP
Hon Kenneth LEUNG
Dr Hon KWOK Ka-ki
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Dr Hon Elizabeth QUAT, BBS, JP
Hon SHIU Ka-fai
Hon SHIU Ka-chun
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon LAU Kwok-fan, MH
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho

Members absent : Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP

Public officers attending : **Agenda item I**

Department of Justice

Ms Teresa CHENG, SC
Secretary for Justice

Mr Wesley WONG, SC
Solicitor General

Ms Christina CHEUNG
Law Officer (Civil Law)

Mr Paul TSANG
Law Officer (International Law)

Ms Theresa JOHNSON
Law Draftsman

Mr David LEUNG, SC
Director of Public Prosecutions

Mr Alan SIU
Director of Administration and Development

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

Miss Katherine CHAN
Council Secretary (4)6

Miss Winnie CHENG
Senior Legislative Assistant (4)1

Ms Emily LIU
Legislative Assistant (4)6

Action

I. Policy initiatives of the Department of Justice

(LC Paper No. CB(4)537/17-18(01) - Administration's paper on policy initiatives of the Department of Justice)

Briefing by the Administration

At the invitation of the Chairman, Secretary for Justice ("SJ") briefed members on the 2018 policy initiatives of the Department of Justice ("DoJ"), details of which were set out in LC Paper No. CB(4)537/17-18(01). She highlighted the following major areas of work of DoJ:

- (a) consolidating Hong Kong Special Administrative Region ("HKSAR")'s position and competitiveness as a leading centre for international legal and dispute resolution services in the Asia-Pacific region;
- (b) enhancing legal cooperation in civil and commercial matters between HKSAR and the Mainland;

- (c) enhancing the quality and effectiveness of criminal prosecution work; and
- (d) progress of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill.

2. SJ also gave a brief account of the latest progress of the follow-up work on the unauthorized building works ("UBWs") in her properties in Tuen Mun, Repulse Bay, Sha Tin and Fo Tan. She deeply apologized for any inconvenience caused by the incident.

3. The Chairman then invited members to discuss any issues related to the agenda item. She reminded members that in accordance with Rules 83A and 84 of the Rules of Procedure of the Legislative Council ("LegCo"), they should disclose the nature of any direct or indirect pecuniary interests relating to the subject under discussion at the meeting before they spoke on the subject.

Legal and dispute resolution services

4. Ir Dr LO Wai-Kwok supported DoJ's priorities given to proactively promoting HKSAR as an international centre of legal and dispute resolution services in the context of the Belt and Road Initiative and the Guangdong-Hong Kong-Macao Bay Area ("the Bay Area") development. He said that it was his hope that Hong Kong could capitalize on the opportunities arising thereof.

5. SJ responded that the Administration would, together with relevant stakeholders, continue to promote in the Mainland the strengths of HKSAR as an international centre of legal and dispute resolution services and the role that such services could play in the Belt and Road Initiative and the Bay Area development. She added that the promotional activities might take the form of visits, seminars and conferences.

6. Mr Christopher CHEUNG said that, in order to seize the opportunities provided by the Belt and Road Initiative and the Bay Area development, the Administration should enhance the existing financial dispute resolution framework and investor protection, and promote Hong Kong's financial dispute resolution services in the Mainland and overseas. He enquired the Administration how the above were achieved.

7. In response, SJ advised that Financial Dispute Resolution Centre ("FDRC") had been providing mediation and arbitration services to financial institutions established in Hong Kong and their customers. FDRC aimed to facilitate the resolution of financial disputes between the institutions and their customers amicably by way of mediation first and, if unsuccessful, arbitration

next, and it had an over 80% success rate in 2016 in mediating financial disputes between investors and the financial institutions.

8. SJ further pointed out that mediation had the benefit of identifying the common goal, of focusing on the interests of those concerned in search for a solution that would be acceptable to them. The Administration would continue its efforts in promoting Hong Kong's financial dispute resolution services in the Mainland and other overseas countries/places.

9. Pointing out that the shipping sector had expressed concerns about the development of quality maritime services, in particular maritime arbitration services in Hong Kong, Mr Frankie YICK enquired how the Administration would further enhance the development of Hong Kong as a leading centre for international legal and dispute resolution services.

10. In response, SJ explained that DoJ had been making continuous efforts to improve the legal framework for resolution of disputes. She pointed out that, under the New York Convention, arbitral awards made in Hong Kong were enforceable in more than 150 places globally. As a result, many parties chose to conduct arbitration in Hong Kong. SJ further said that DoJ would continue to work closely with the local and overseas legal professional bodies and the dispute resolution sectors to promote Hong Kong's legal and dispute resolution services in the Bay Area, other areas of the Mainland and to the world, particularly in emerging economies in the Asia-Pacific region.

Criminal prosecution work

11. Mr CHAN Chun-ying noted that it was an established practice for DoJ to brief out some criminal prosecution cases to outside counsel with the objective of building a pool of experienced prosecutors to supplement those within DoJ, and promoting a strong and independent local Bar. He enquired under what circumstances DoJ would consider briefing out criminal prosecution work.

12. In response, SJ explained that briefing out was mainly to meet operational needs. In general, DoJ might resort to briefing out when the size, complexity, quantum and length of a case so dictated or when it was deemed appropriate to obtain independent outside counsel's advice or services so as to address possible perception of bias or issues of conflict of interests. In response to Mr CHAN Chun-ying's request, SJ undertook to provide supplementary information on the ratio between the number of in-house cases and brief out cases.

(Post-meeting note: The Administration's supplementary information paper was issued to members on 26 February 2018 via LC Paper No. CB(4)657/17-18(01).)

13. Dr Elizabeth QUAT noted that more than three years had lapsed since the "Occupy Movement" took place in 2014. She expressed grave concerns over the slow progress of DoJ in taking prosecutions against those who had been charged for their involvement in the "Occupy Movement" and the small number of convicted cases. Dr QUAT asked the Administration to report on the progress of the prosecution work against the instigators of the "Occupy Movement".

14. SJ replied that since there were a large number of arrested persons in relation to the "Occupy Movement" and there was voluminous evidence involved, the Prosecutions Division of DoJ had to spend substantial time in studying and examining the relevant materials and the relevant legal or technical issues. SJ said that DoJ would continue to handle the prosecution work relating to the "Occupy Movement" in a fair and impartial manner having regard to the evidence available, and in strict adherence to the Prosecution Code and the relevant law (e.g. Article 63 of the Basic Law), and would strive to ensure efficiency in handling the cases at the same time.

Facilitating young lawyers' career development

15. In view of the difficulties encountered by young lawyers, Ir Dr LO Wai-kwok urged the Administration to explore more opportunities for the new generation of lawyers to develop their legal careers. In reply, SJ advised that the Administration had planned to introduce a pilot scheme under which local young lawyers or less experienced lawyers would undertake more straightforward arbitration or mediation cases. This would not only equip them with necessary skills and experience in the field of dispute resolution, but also assist them to seize the opportunities provided by the Belt and Road Initiative and the Bay Area development.

16. Ms YUNG Hoi-yan also suggested allowing junior barristers to take part in the District Court cases or High Court cases together with the senior barristers so as to provide the young lawyers in the private practice with the opportunities of exposure to public prosecution work. Ms YUNG said that it would widen junior barristers' exposure and enrich their experience. SJ welcomed Ms YUNG's suggestion and would ask the relevant Division in DoJ to consider her view.

Law drafting work

17. Noting that DoJ was committed to the continuous professional development of Government Counsel ("GC") in the Law Drafting Division, Mr CHAN Chun-ying suggested that the Administration might consider assigning GC to drafting work according to their specialized knowledge in different fields (e.g. economic development, health services and security), so as to enhance the quality of the legislative drafting service.

18. Mr MA Fung-kwok said that on 4 November 2017, the Standing Committee of the National People's Congress ("NPCSC") adopted "The Draft Decision of the Standing Committee of the National People's Congress on Addition to the List of National Laws in Annex III to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China", adding the National Anthem Law of the People's Republic of China ("the National Anthem Law") to Annex III of the Basic Law. Mr MA enquired about the progress of local legislation to implement the National Anthem Law. He also asked whether the Administration would draw reference to the previous experience in applying the national laws on the national flag and national emblem (e.g. legislative arrangements and penalties) to HKSAR when drafting the National Anthem Bill.

19. In response, SJ advised that the Administration had commenced the local legislative work to implement the National Anthem Law, and was preparing to draft the National Anthem Bill. During the drafting process, the Administration would draw reference from the past experience. DoJ would provide legal advice as appropriate and carry out the law drafting work. SJ further explained that the legislative principle of the National Anthem Bill was to maintain the purpose and intent of the National Anthem Law to fully reflect its spirit and to preserve the dignity of the national anthem, so that citizens would respect the national anthem, whilst taking into account the common law system and the actual circumstances in Hong Kong. As regards the legislative timetable, the Administration planned to submit the National Anthem Bill to LegCo for scrutiny within the current legislative session.

20. Mr CHEUNG Kwok-kwan noted that the Administration had published the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill on 26 January 2018 and the Bill would receive its First Reading at the Council meeting of 31 January 2018. Noting that implementation of Hong Kong and Mainland customs, immigration and quarantine procedures at the West Kowloon Station of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL") was an issue of high controversy, Mr CHEUNG asked if the Administration was confident of completing the legislative process smoothly so as to tie in with the commissioning of the Hong Kong section of

XRL by the third quarter of 2018. SJ replied that notwithstanding the time constraint, LegCo Members as well as members of the public would have the opportunities to study the Bill and express their views at the Bills Committee. The Administration would also explain the content of the Bill in detail in that context.

Law reform

21. Referring to the report published by the Law Reform Commission of Hong Kong ("LRC") on class action in 2012, Mr Martin LIAO and Mr Holden CHOW expressed concerns about the work progress of introducing a class action regime in Hong Kong as the regime could foster the development of financial markets and enhance the business environment. They also asked if DoJ would brief members of the Panel on Administration of Justice and Legal Services ("the Panel") about the progress shortly.

22. SJ replied that LRC's report on class action had proposed the implementation of a class action mechanism by phases, starting with class action proceedings arising from consumer cases and, upon experience accrued, making assessments on whether and when the class action mechanism should be extended to other types of cases.

23. SJ further said that DoJ had established a cross-sector working group to study and consider the proposal. The working group would take into consideration views from different sectors, including representatives from the business sector, and strike a balance for the overall benefit of the society. As the matters involved in the study of implementing a class action regime were interrelated and very complicated, the working group needed time to carefully study the issues and go about its task. SJ added that DoJ would report the implementation status of LRC's report on class action to LegCo at an appropriate juncture.

Workload of the Department of Justice

24. Mr SHIU Ka-fai noted that the Administration had been seeking opportunities for entering into free trade agreements with other overseas jurisdictions. He expressed the concern whether DoJ's manpower resources could cope with the increased workload and, given the difference between Hong Kong and other overseas jurisdictions in terms of their legal systems, whether DoJ had the competence and expertise to provide specialists' advice on the new initiatives of trade-related agreements.

25. SJ advised that to better cope with the substantial increase in workload of the Treaties and Law Unit of the International Law Division of DoJ as a

result of the increasing volume, complexity and scope of its work, DoJ had proposed the creation of one permanent directorate post of Deputy Principal GC in the International Law Division. One of the major duties of the proposed post was participating in the negotiation of multilateral and bilateral agreements and arrangements in trade-related areas (including investment, tax and civil aviation). SJ acknowledged the Panel's support given to the proposal at its meeting on 22 January 2018, and undertook that DoJ would review the manpower required to manage the increasing workload from time to time.

The Chief Executive's consent for the Secretary for Justice to complete the handling of six arbitration cases

26. Ir Dr LO Wai-Kwok noted that when SJ accepted the invitation to take up her post, she was in the course of handling six arbitration cases ("the six cases") and the Chief Executive had given consent for her to complete the six cases during her term as SJ, which was a special treatment. Ir Dr LO enquired why SJ could not resign from her role as arbitrator in the six cases and passed the cases to other arbitrators to follow up.

27. In response, SJ replied that the six cases were near completion at the material time. The hearing of which had been completed and she had basically finished her tasks as an arbitrator. She said that as what remained to be done was for the arbitral tribunals concerned to finalize and issue the arbitration decisions/awards/orders on the six cases, she would fail in her duty as an arbitrator and bring considerable inconvenience or losses to the parties concerned if she had resigned from her role as arbitrator at that stage. This might even undermine the policy direction of developing Hong Kong into a regional centre for legal services and dispute resolution.

28. Dr CHENG Chung-tai questioned whether SJ had disclosed the content of the six cases to the Chief Executive when she sought the Chief Executive's consent to complete the handling of such cases, which might result in the violation of confidentiality requirements. Dr CHENG said that it was inappropriate for SJ to continue handling the six cases after she had assumed SJ's office in view of the potential role conflicts.

29. In reply, SJ said that without compromising the requirement to keep the content of the arbitration cases confidential, she had advised the Chief Executive that the six cases did not involve the HKSAR Government, the post of SJ or any public bodies in Hong Kong, and that there was nothing in the arbitration process which concerned any official affairs of the HKSAR Government or SJ. Taking into account the above factors and the special circumstances of the appointment, the Chief Executive gave consent for her to complete the handling of the six cases during her term as SJ. SJ stressed that

this arrangement would not affect the duties required to be discharged by her as SJ, nor the work of the HKSAR Government.

Unauthorized building works in the properties of the Secretary for Justice

30. Mr Michael TIEN said that it was undesirable for SJ to have failed to respond proactively to media enquiries on the UBWs identified in her properties, and asked SJ whether she could promise that the UBWs would be removed as soon as possible.

31. In reply, SJ said that after receiving the Buildings Department ("BD")'s Notice requesting entry to her properties for investigation, she had immediately commissioned an authorized person ("AP") to conduct inspection to the properties concerned. Regarding the UBWs identified, the AP had already submitted a rectification works proposal and proposed works programme to BD, which had replied to the AP about its acceptance of the proposal. SJ added that the rectification works for the properties with actionable UBWs or non-actionable UBWs would be carried out as soon as practicable.

32. Mr Michael TIEN further enquired SJ whether, apart from her properties in Tuen Mun, Repulse Bay, Sha Tin and Fo Tan, there were UBWs in her other properties which had not yet been made public, and whether SJ would learn a lesson from the incident so that she could improve her awareness in future.

33. In reply, SJ said that there was no other property under her name or her company's name apart from those properties mentioned above.

34. Mr Jeremy TAM expressed particular concern about the additional partition in SJ's property at Kin Ho Industrial Building in Fo Tan, which might affect certain sprinkler heads and hence pose fire safety concerns so that they might have to be reinstalled. In reply, SJ replied that the UBWs identified at the abovementioned property included a supporting frame for an air-conditioner and an additional partition. After inspection, the AP she commissioned had suggested removing the whole supporting frame for the air-conditioner. However, the AP proposed and BD agreed that rectification work was not needed for the additional partition, and the AP did not identify any problem about the sprinkler heads in her property at Fo Tan.

Integrity checking related to politically appointed officials

35. The Deputy Chairman expressed concern that there might be loophole in the integrity checking system related to the appointment of politically appointed officials ("PAOs"), which had resulted in its failure to uncover the UBWs in SJ's

properties. He asked SJ whether she had been required to declare whether there were any UBWs in her residence during the integrity checking.

36. In response, SJ advised that all PAOs were required to undergo integrity checking before appointment. She added that, in order to maintain the effectiveness and integrity of the integrity checking system related to PAOs, it was necessary to keep the specific arrangements and the related details of the system strictly confidential. As such, it was inappropriate for her to disclose or make statements on the details of the integrity checking due to confidentiality.

37. Mr Charles MOK said that, to allay the public concerns, SJ should disclose the information she had provided during the integrity checking related to her appointment as SJ, particularly whether she had disclosed the UBWs in her properties. Mr MOK also informed members that he would move a motion under Article 73(5) and (10) of the Basic Law at the Council meeting of 31 January 2018, summoning SJ to attend before the Council at its meeting of 28 February 2018 to testify in relation to whether she was involved in any concealment of facts in the process of integrity checking.

Credibility of the Department of Justice

38. Mr James TO and Dr Fernando CHEUNG pointed out that SJ was a Senior Counsel in private practice, a chartered engineer and the former Chairman of the Appeal Tribunal Panel (Buildings) when she was appointed as PAO. As such, she should have the ability and expertise to notice the UBWs in her properties. Mr TO asked SJ about the time when she became aware of those UBWs. Dr CHEUNG also opined that SJ had deliberately broken the law and hence undermined the credibility of DoJ.

39. Ms Tanya CHAN pointed out that, according to the mortgage and property transfer documents signed by SJ for purchasing House 4 of Villa De Mer in Tuen Mun, there was no basement in that property. Ms CHAN said that with the specific professional backgrounds that SJ possessed, SJ should be conversant with the UBWs and should have noticed that the basement in the abovementioned property was an illegal structure from the outset. Therefore, Ms CHAN expressed regret at SJ's personal integrity and professional judgment. Dr KWOK Ka-ki and Mr Alvin YEUNG shared the views of Ms CHAN.

40. In response to members' views, SJ said that when she purchased House 4 of Villa De Mer in Tuen Mun in 2008, the property had been of the same condition as it was at the moment when the UBWs were reported. After receiving BD's notice regarding the UBWs, she had been fully supportive of

BD's investigation work and commissioned an AP to conduct inspections and carry out rectification works as soon as practicable. SJ said that it was her responsibility for the oversight of the UBWs in the said properties, and she should have done better by engaging an AP to inspect the properties before taking possession.

41. Mr KWONG Chun-yu expressed disappointment that SJ had concealed various issues relating to the UBWs in her properties when she assumed office, and kept delaying giving an account of the related matters to the public. Hence, he questioned whether SJ would consider resigning from her post.

42. Pointing out that SJ's performance in handling the incident regarding the UBWs in her properties had fallen short of public expectations, Mr CHUNG Kwok-pan enquired how SJ would restore public confidence and trust in her handling of SJ's duties in an impartial and fair manner.

43. In response, SJ advised that her decision to accept the appointment as SJ was taken after careful and serious consideration. She wished to use her experience in resolving disputes and handling transnational and local matters in law to serve Hong Kong, to uphold the rule of law and judicial independence. Furthermore, upon acceptance of the invitation, she had tendered resignation for positions in various local and international professional bodies as well as public appointments and withdrawn from participation in various local and international litigation and arbitration cases in order to focus her efforts on SJ's duties.

44. Mr Christopher CHEUNG said that SJ had already given a full and open account of the incident on the UBWs in her properties to the public. Therefore, the dispute should come to an end and it was time for SJ to concentrate her efforts on carrying out SJ's duties. Sharing a similar view, Mr Holden CHOW opined that SJ should have learned a lesson from the incident and make best endeavors to handle her duties to restore public confidence in SJ.

Disqualification of a candidate from running in an election

45. Mr HUI Chi-fung and Mr Charles MOK expressed grave concerns about the disqualification of Miss Agnes CHOW of Demosistō from running in the 2018 LegCo by-election. Mr HUI enquired whether the decision that Miss Agnes CHOW was not validly nominated was made by the Returning Officer, SJ, the Chief Executive or the Mainland Government.

46. In response, SJ advised that in accordance with the Legislative Council Ordinance (Cap. 542) and the Electoral Affairs Commission (Electoral

Procedure) (Legislative Council) Regulation (Cap. 541D), whether a candidate's nomination was valid or not was determined by the Returning Officer according to the legal requirements and relevant procedures. Depending on the circumstances of individual cases, the Returning Officer might seek legal advice from DoJ and, where necessary, might require a candidate to furnish additional information that he or she considered appropriate according to Cap. 541D, so as to satisfy himself or herself as to the eligibility of the candidate or the validity of the nomination.

47. Mr HUI Chi-fung and Mr KWONG Chun-yu asked if SJ had been directly involved in providing legal advice with regard to the decision made by the Returning Officer on Miss Agnes CHOW's nomination. Dr Helena WONG also enquired whether it was possible for the Returning Officer not to take the legal advice given by DoJ, and, what actions DoJ would take if its legal advice was not taken.

48. SJ explained that upon the Returning Officer's request, DoJ would provide legal advice and SJ would also be involved as appropriate. She stressed that the Returning Officer should, in accordance with the law and having considered the relevant information, decide whether or not a person was validly nominated as a candidate.

49. Dr KWOK Ka-ki and Mr Alvin YEUNG said that it was noted that, after considering the advice provided by DoJ, the Returning Officer had decided that the nomination of Miss Agnes CHOW was invalid. They asked about the details of DoJ's legal advice which had been given to the Returning Officer regarding Miss Agnes CHOW's nomination and the reasons why Demosistō was considered to have breached the principle of "one country, two systems".

50. In reply, SJ said that the communications between DoJ and the Returning Officer were protected by legal professional privilege and it was inappropriate to disclose the contents of DoJ's advice given to the Returning Officer.

51. Ms Claudia MO said that, in her reasons given for ruling Miss Agnes CHOW's nomination invalid, the Returning Office had mentioned the Demosistō's Doctrine of "democratic self-determination" was inconsistent with the constitutional and legal status of HKSAR. She asked, given such a view, whether the Administration would make an order prohibiting the operation of Demosistō.

52. SJ responded that the decision of the Returning Officer should have been made in accordance with the law with no political consideration. She said that when making those decisions, the Returning Office would have to apply the law

including those relating to the election, LegCo, as well as the Basic Law. While DoJ would provide legal opinion regarding the relevant law as requested by the Returning Officer, he or she would have to apply the facts and information that was available to him or her in order to come to those decisions.

53. Mr Kenneth LEUNG and Mr CHAN Chi-chuen said that it was inappropriate for the Returning Officer to disqualify Miss Agnes CHOW of Demosistō from running the 2018 LegCo by-election by making reference to NPCSC's interpretation of Article 104 of the Basic Law ("the Interpretation"), which concerned the constitutional duty on the part of certain specified categories of public officials, when assuming office, to swear to uphold the Basic Law and to swear allegiance to HKSAR of the People's Republic of China. They said that the Interpretation should only be applied to the elected members of LegCo, but not to the candidates for LegCo elections. Mr CHAN urged the Administration to conduct a review in this regard.

54. Mr WU Chi-wai also pointed out that a member from Demosistō advocating "democratic self-determination" was elected as a member of LegCo in September 2016 while Miss Agnes CHOW from the same political party was disqualified from running in an election in January 2018 owing to the Interpretation. As such, he considered it inappropriate for the Administration to conduct "political screening" of candidates for LegCo elections.

55. In response to members' views, SJ advised that under Article 158 of the Basic Law, NPCSC had the power to interpret the Basic Law. The Interpretation in 2016 clearly explained the meaning of Article 104 of the Basic Law and the consequences of contravening the provision. It also explained clearly the requirements for oath-taking by specified officers, including members of LegCo. In addition, the judgment handed down on HCAL 185/2016 also indicated that the theme and policy of "one country, two systems" ran throughout the Basic Law. In this connection, upholding the Basic Law was a basic constitutional duty of a legislator. If a person advocated or promoted self-determination or independence by any means, he or she could not possibly uphold the Basic Law or fulfill his or her duties as a legislator. Mr Holden CHOW concurred with SJ's views.

(At 6:39 pm, the Chairman suggested and members supported extending the meeting for 15 minutes to 7:00 pm.)

Motions

56. The Chairman said that she had received two motions proposed by members. The first one was proposed by the Deputy Chairman and seconded by Mr Alvin YEUNG ("the first motion") and the second one was proposed by

Mr Alvin YEUNG and seconded by the Deputy Chairman ("the second motion"). The Chairman said that she considered the proposed motions directly related to the agenda item under discussion. At members' requests, the Chairman ordered a division.

57. The Chairman put the first motion to vote:

律政司司長無視其在宣誓案及立法會補選的角色衝突，向選舉主任提供錯誤的法律意見，導致選舉主任因參選人政見而違法取消其參選資格，剝奪香港市民受《香港人權法案》保障的參選權和參與公共生活的權利。本委員會認為律政司司長的表現極不專業，現對其投不信任票。

(Translation)

That, as the Secretary for Justice has, in disregard for her role conflict in the oath-taking cases and the Legislative Council by-election, given incorrect legal advice to the Returning Officer, thus causing the Returning Officer to unlawfully disqualify a nominee due to her political views and depriving Hong Kong people of the rights to participate in elections and public life as enshrined in the Hong Kong Bill of Rights, this Panel deems the Secretary for Justice's performance as highly unprofessional, and hereby casts a vote of no confidence in her.

58. The Chairman announced that seven members voted for the motion, 10 voted against it and none abstained from voting (details of division were in **Appendix I**). The Chairman declared that the motion was negatived.

59. The Chairman put the second motion to vote:

新任律政司司長上任時隱瞞多項僭建及樓宇買賣問題，並一直拖延向立法會交代有關事宜。本委員會對司長的個人誠信、專業判斷和公職表現深感遺憾，認為她不適合出任律政司司長，現對其投不信任票。

(Translation)

That, as the new Secretary for Justice concealed various issues of unauthorized building works and property transactions when she assumed office, and has kept delaying giving an account of the related matters to the Legislative Council, this Panel expresses deep regret at her personal integrity, professional judgment and performance in public

office, opines that she is not fit for the post of Secretary for Justice, and hereby casts a vote of no confidence in her.

60. The Chairman announced that seven members voted for the motion, nine voted against it and one abstained from voting (details of division were in **Appendix II**). The Chairman declared that the motion was negated.

II. Any other business

61. There being no other business, the meeting ended at 6:51 pm.

Council Business Division 4
Legislative Council Secretariat
21 January 2019

點名表決DIVISION: 1
日期 DATE: 29/01/2018
時間 TIME: 06:49:52 下午 PM

動議 MOTION: 郭榮鏗議員就"律政司的政策措施"動議的議案
Motion moved by Hon Dennis KWOK Wing-hang on "Policy initiatives of the Department of Justice"

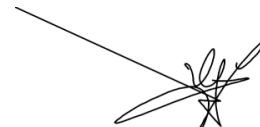
動議人 MOVED BY: 郭榮鏗 Dennis KWOK

出席 Present : 17
投票 Vote : 17
贊成 Yes : 7
反對 No : 10
棄權 Abstain : 0
結果 Result : 否決 Negatived

個別表決如下 THE INDIVIDUAL VOTES WERE AS FOLLOWS:

議員	MEMBER	投票	VOTE	議員	MEMBER	投票	VOTE
梁美芬	Dr Priscilla LEUNG	反對	NO	鍾國斌	CHUNG Kwok-pan	反對	NO
涂謹申	James TO	贊成	YES	楊岳橋	Alvin YEUNG	贊成	YES
石禮謙	Abraham SHEK	反對	NO	朱凱迪	CHU Hoi-dick	贊成	YES
陳健波	CHAN Kin-por	反對	NO	吳永嘉	Jimmy NG		
謝偉俊	Paul TSE	反對	NO	何君堯	Dr Junius HO		
陳志全	CHAN Chi-chuen	贊成	YES	周浩鼎	Holden CHOW	反對	NO
郭榮鏗	Dennis KWOK	贊成	YES	容海恩	YUNG Hoi-yan	反對	NO
張超雄	Dr Fernando CHEUNG	贊成	YES	張國鈞	CHEUNG Kwok-kwan	反對	NO
廖長江	Martin LIAO	反對	NO	許智峯	HUI Chi-fung	贊成	YES
盧偉國	Ir Dr LO Wai-kwok	反對	NO				

秘書 CLERK



點名表決DIVISION: 2
日期 DATE: 29/01/2018
時間 TIME: 06:50:34 下午 PM

動議 MOTION: 楊岳橋議員就"律政司的政策措施"動議的議案
Motion moved by Hon Alvin YEUNG on "Policy initiatives of the Department of Justice"

動議人 MOVED BY: 楊岳橋 Alvin YEUNG

出席 Present : 17
投票 Vote : 17
贊成 Yes : 7
反對 No : 9
棄權 Abstain : 1
結果 Result : 否決 Negatived

個別表決如下 THE INDIVIDUAL VOTES WERE AS FOLLOWS:

議員	MEMBER	投票	VOTE	議員	MEMBER	投票	VOTE
梁美芬	Dr Priscilla LEUNG	反對	NO	鍾國斌	CHUNG Kwok-pan	反對	NO
涂謹申	James TO	贊成	YES	楊岳橋	Alvin YEUNG	贊成	YES
石禮謙	Abraham SHEK	反對	NO	朱凱迪	CHU Hoi-dick	贊成	YES
陳健波	CHAN Kin-por	反對	NO	吳永嘉	Jimmy NG		
謝偉俊	Paul TSE	棄權	ABSTAIN	何君堯	Dr Junius HO		
陳志全	CHAN Chi-chuen	贊成	YES	周浩鼎	Holden CHOW	反對	NO
郭榮鏗	Dennis KWOK	贊成	YES	容海恩	YUNG Hoi-yan	反對	NO
張超雄	Dr Fernando CHEUNG	贊成	YES	張國鈞	CHEUNG Kwok-kwan	反對	NO
廖長江	Martin LIAO	反對	NO	許智峯	HUI Chi-fung	贊成	YES
盧偉國	Ir Dr LO Wai-kwok	反對	NO				

秘書 CLERK

