

立法會

Legislative Council

LC Paper No. CB(4)319/18-19

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Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 25 June 2018, 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 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 YUNG Hoi-yan
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Hon Vincent CHENG Wing-shun, MH

Members attending: Hon Charles Peter MOK, JP
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, BBS, JP

**Public officers
attending**

: Agenda item III

Department of Justice

Mr Wesley WONG, SC
Solicitor General

Miss LEE Sau-kong
Deputy Solicitor General
(Policy Affairs) (Acting)

Miss Janice KWAN
Senior Government Counsel

Agenda item IV

The Law Reform Commission of Hong Kong

Ms Teresa CHENG, SC
Secretary for Justice
Chairman of the Law Reform Commission of Hong
Kong

Mr Peter WONG H H
Secretary

Mr Byron LEUNG
Deputy Secretary

Agenda item V

The Law Reform Commission of Hong Kong

Mr Peter DUNCAN, SC
Chairman
Review of Sexual Offences Sub-committee

Mr Eric CHEUNG T M
Member
Review of Sexual Offences Sub-committee

Mr Peter WONG H H
Secretary
Law Reform Commission of Hong Kong

Miss Sally NG
Secretary
Review of Sexual Offences Sub-committee

Mr Raymond LEUNG, SC
Chairman
Periodical Payments for Future Pecuniary Loss in
Personal Injury Cases Sub-committee

Mr Norman HUI
Member
Periodical Payments for Future Pecuniary Loss in
Personal Injury Cases Sub-committee

Mr Mark REEVES
Member
Periodical Payments for Future Pecuniary Loss in
Personal Injury Cases Sub-committee

Ms Kitty FUNG
Secretary
Periodical Payments for Future Pecuniary Loss in
Personal Injury Cases Sub-committee

**Attendance by
invitation : Agenda item III**

Hong Kong Bar Association

Mr Edward CHAN, SC

The Law Society of Hong Kong

Mr Stephen HUNG
Past President

Mr Brian GILCHRIST
Council Member

Mr Nick CHAN
Council Member

Mr Simon LAI
Council Member

Ms Heidi CHU
Secretary General

Ms Vivien LEE
Director of Standards & Development

Law Association, The Hong Kong University Students'
Union

Mr YAM Long-hin
Chairman

School of Law, City University of Hong Kong

Prof Geraint HOWELLS
Dean

Department of Professional Legal Education,
The University of Hong Kong

Mr CHOW Wai-shun
Head

Law Students' Society, City University of Hong Kong
Students' Union

Mr LEUNG Hei-tsun
President, Acting Executive Committee

Faculty of Law, The Chinese University of Hong Kong

Prof Stephen HALL
Professor

Mr Christopher KNIGHT
Professional Consultant

The University of Hong Kong School of Professional
and Continuing Education

Mr Danny GITTINGS
Associate Professor

Agenda item V

Hong Kong Bar Association

Mr Nicholas PIRIE F F

Mr James TZE Y K

Mr Tony LI

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 paper(s) issued since the last meeting**
(LC Paper No. CB(4)1258/17-18(01) - Judiciary Administration's response to the joint letter from Hon Dennis KWOK and Hon Alvin YEUNG on photo-taking during court proceedings and issues relating to attempted interference to fair trials)

Members noted the above paper issued since the last meeting.

II. Items for discussion at the next meeting

(LC Paper No. CB(4)1249/17-18(01) - List of outstanding items for discussion

LC Paper No. CB(4)1249/17-18(02) - List of follow-up actions)

2. Members agreed to discuss the following items at the next regular meeting to be held on 18 July 2018 –

- (a) Proposed creation of judicial posts and proposed creation/extension of directorate posts in the Judiciary;
- (b) Review on the statutory retirement ages of Judges and Judicial Officers; and
- (c) Mechanism for handling complaints against judicial conduct - Review of the progress in implementing the improvement measures.

(Post-meeting note: Members were informed via LC Paper No. CB(4)1357/17-18 on 6 July 2018 that as directed by the Chairman, the item on "Law Reform Commission of Hong Kong's consultation paper on miscellaneous sexual offences" had been added to the agenda of the meeting on 18 July 2018 to receive views from concerned organizations.)

Other discussion items on the list of outstanding items for discussion

3. Referring to item 16 of the list of outstanding items for discussion on "Mutual legal assistance and agreement on surrender of fugitive offenders between Hong Kong and Taiwan". The Chairman consulted members on her suggestion to request the Panel on Security to invite members of the Panel on Administration of Justice and Legal Services ("the Panel") to join its discussion when the above subject was discussed. Members agreed.

4. The Chairman then referred to item 17 of the list of outstanding items for discussion on "Photo-taking during court proceedings and issues relating to attempted interference to fair trials" and sought members' views on the response from the Judiciary Administration ("JA") on the subject (LC Paper No. CB(4)1258/17-18(01) issued to members on 19 June 2018).

5. The Deputy Chairman noted that the Judiciary had recently issued a new practice direction regarding the restrictions on the use of mobile phones and other devices in courtrooms for jury proceedings. Having considered the latest

developments and the explanation given in JA's letter, he considered that there was no need for the Panel to discuss the matter.

6. After discussion, members agreed to remove item 17 from the list of outstanding items for discussion.

III. Legal education and training in Hong Kong

Meeting with deputations and the Administration

(LC Paper No. CB(4)1249/17-18(03) - Administration's paper on legal education and training in Hong Kong

LC Paper No. CB(4)1249/17-18(04) - Paper on legal education and training in Hong Kong prepared by the Legislative Council Secretariat (updated background brief))

Briefing by the Administration

7. At the invitation of the Chairman, Solicitor General of the Department of Justice ("DoJ") ("SG") briefed members on the latest development of the comprehensive review on legal education and training in Hong Kong ("the Comprehensive Review") commissioned by the Standing Committee on Legal Education and Training ("SCLET"), which released the final report of its appointed consultants on the Comprehensive Review ("the Final Report") on 15 May 2018. He said that the consultants had made 38 recommendations in total, which were extracted in the Appendix of the Administration's paper. He also said that DoJ would continue to engage the relevant stakeholders in constructive discussion with regard to the Final Report and its recommendations using the SCLET platform. He reiterated that any changes to the legal education and training system in Hong Kong should be introduced in the public interest.

(At 4:37 pm, the Chairman suspended the meeting to allow those Panel members who were also members of the Public Works Subcommittee ("PWSC") to proceed to the meeting venue of PWSC for voting. The meeting resumed at 5:54 pm and SG continued his briefing.)

Presentation of views by the Hong Kong Bar Association, the Law Society of Hong Kong and other deputations

8. The Chairman invited representatives of the Hong Kong Bar Association ("Bar Association") and the Law Society of Hong Kong ("Law Society") and other deputations to present their views. She reminded them that, when addressing the Panel at the meeting, they were not covered by the protection and immunity under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), and their written submissions were also not covered by the Ordinance. In total, eight deputations presented their views, a summary of which is in the **Appendix**.

Discussion

Declaration of interests

9. Dr Junius HO declared that he was the President of the Law Society in 2011-2012 and had provided service for the Law Society for more than 22 years. Mr Paul TSE declared that he was a practising solicitor and a former barrister, and had obtained the Postgraduate Certificate in Laws ("PCLL"). In addition, his legal firm had employed more than 800 employees over the years, some of whom were mature law students who had made mid-career shift to join the legal profession and had been working in his legal firm for years.

10. Mr Alvin YEUNG declared that he was a barrister and had obtained PCLL from The University of Hong Kong ("HKU"). The Chairman declared that she taught Bachelor of Laws ("LLB") and Juris Doctor ("JD") programmes at the City University of Hong Kong ("City U"), obtained PCLL from HKU and was a member of the Bar Association.

Issues relating to the proposed Law Society Examination

11. The Deputy Chairman expressed grave concern about the Law Society's recent proposal to establish the Law Society Examination ("LSE"), which would bring about major changes to the legal education system. He requested that the Law Society should provide more basic facts and information regarding LSE, such as the estimated demand for LSE places, admission requirements, etc. so that stakeholders could assess the need for LSE and its impacts on the legal profession as a whole.

12. The Chairman enquired about the mode of examination for LSE, the Law Society's manpower resources for administering the examination, the relationship between LSE and PCLL, and whether candidates who failed LSE could enroll for PCLL afterwards.

13. Mr Edward CHAN of the Bar Association expressed that the Bar Association found it difficult to support LSE as the findings of the relevant consultation conducted by the Law Society and details about the examination had not yet been released. He also expressed concern about which university's PCLL syllabus would be used as the benchmark for LSE, given that the Law Society had criticized PCLL being offered by the three universities lacked a uniform standard.

14. Mr Stephen HUNG, Past President of the Law Society, explained that the proposed LSE aimed to provide an additional pathway for entering the solicitors' profession by qualified law graduates who could not secure a place to study PCLL or had failed the PCLL examination in the past, including paralegals working at law firms without legal professional qualifications. Mr HUNG added that the standard required for passing LSE would be on par with that for PCLL, and that multiple attempts to take LSE would be allowed.

15. Mr CHUNG Kwok-pan enquired about the admission requirements for taking LSE. Mr Stephen HUNG advised that it was the Law Society's plan to set the basic requirement for taking LSE at a "2:2 degree" (i.e. Lower Division of Second Class Honours) in LLB or JD.

16. In response to Dr Junius HO's enquiry, Mr Stephen HUNG explained that the common entrance examination ("CEE") previously proposed by the Law Society was different from LSE. The former was a unified examination to be taken by students who had completed PCLL, whereas the latter aimed to provide another choice for those law graduates who could not gain admission to PCLL.

17. Mr Holden CHOW noted that at the meeting of the Panel in March 2018, some law students had expressed worries about the proposed introduction of CEE, especially its impact on their future career, and the uncertainties about the mode and requirements for taking CEE. He considered that the Law Society should first address those worries and there was no need for a rush to establish any examinations.

18. Mr Stephen HUNG explained that the matter on CEE had been discussed for ten odd years but had not been implemented. In order that LSE might be established as soon as possible, the Law Society had planned to launch it in the academic year 2019-2020. He added that, even if LSE was to be established at a later date, it should not be unduly delayed.

Judiciary's views on the proposed Law Society Examination

19. Given that the order that an applicant be admitted as a solicitor was made by the Court, Mr Alvin YEUNG asked whether and when the Law Society had consulted the Chief Justice ("CJ") on the proposal to establish LSE which would have important bearing on the legal profession. He also asked whether the findings in support for the establishment of LSE would be submitted to the Judiciary for reference. Mr Paul TSE also enquired whether the establishment of LSE required CJ's approval.

20. Mr Stephen HUNG replied that, according to his understanding, the establishment of LSE would not require CJ's approval. Nevertheless, the Law Society respected CJ's view on LSE and would consult him in due course.

Impacts of the proposed Law Society Examination on law schools

21. Dr Junius HO indicated support for the establishment of LSE to provide an additional choice for law graduates. He asked about the reasons why HKU objected to the establishment of LSE. In reply, Mr CHOW Wai-shun, Head, Department of Professional Legal Education, HKU said that it was estimated that there would be a total number of 1 200 PCLL applicants for the three law schools in the coming academic year, and about 750 PCLL places would be offered. He was concerned about whether the market could absorb all the PCLL graduates with increased places and those who passed LSE.

22. Dr Junius HO and Mr CHUNG Kwok-pan considered that whether the market could absorb all PCLL graduates or those students passing LSE should not be an issue to the PCLL providers' concern. Mr CHUNG considered that opportunities should be given to all eligible law graduates for studying PCLL, and it was inappropriate for the universities to be the gatekeeper controlling access to the legal profession.

23. Mr Paul TSE considered that the crux of the matter was where the bottleneck should be placed, whether at the point of entry to PCLL, workplace apprenticeship or the legal profession itself. He said that, from his observation, legal professionals tended to be more committed to their work if they had encountered difficulties in their studies and joined the legal profession through mid-career shift. In this connection, Mr TSE indicated support for the proposed LSE as it would provide a chance to those law graduates who were working in the legal field but without the required professional qualification.

24. Mr CHOW Wai-shun clarified that what he was most concerned was the career prospects of PCLL graduates in considering whether the market could

absorb them and the university had no intention to be the gatekeeper to the entrance of the legal profession.

25. Prof Geraint HOWELLS, Dean, School of Law, City U said that his main concern was that it was not well justified to have two programmes, i.e. PCLL and LSE, for law graduates to choose simply because they could not all gain admission to PCLL. He also expressed his concern about the possibility that LSE might be perceived by some employers and students as a "second class" pathway, only for those who could not gain admission to PCLL.

Issues relating to the Postgraduate Certificate in Laws Programme

26. The Deputy Chairman said that if the three law schools could increase the number of PCLL places to accommodate more eligible law graduates, there might not be a need for LSE. He asked whether the three law schools had increased the number of PCLL in recent years and, if so, the relevant details. He also asked whether they had any plan for increasing the PCLL places in the future.

27. Prof Geraint HOWELLS and Mr CHOW Wai-shun respectively advised that their law schools had increased the PCLL places for the double cohort arising from the implementation of the new academic structure in previous years. Although there would no longer be two separate cohorts of students studying at the same time in the coming academic years, the universities would maintain the current number of PCLL places.

28. Prof Stephen HALL, Professor, Faculty of Law of The Chinese University of Hong Kong ("CUHK") said that CUHK had increased the PCLL places from 150 from the start to the present number of 170. He added that his faculty had put forward a proposal to the CUHK's authority to further increase the number of places by 30.

29. Mr Stephen HUNG said that the universities had been indicating that they would increase the PCLL places for many years. However, even the number of such places had been increased, it would only benefit new applicants for admission to PCLL but not those who had failed to gain admission to the PCLL programme in the past.

30. Mr CHUNG Kwok-pan considered that the current number of full-time PCLL places insufficient. He pointed out that the applicants who failed to gain admission to full-time PCLL would have to opt for the two-year part-time PCLL or re-submit application for the full-time PCLL one year later. Therefore, law graduates who could not secure PCLL places should welcome LSE as it would save their time. Mr CHUNG urged the two legal professional

bodies to come up with some mutually acceptable proposal. Sharing a similar view, Mr Holden CHOW said that a second chance should be provided to those law graduates who had failed to gain admission to PCLL.

(Note: From 6:10 pm to 6:13 pm, the Deputy Chairman took the chair during the temporary absence of the Chairman who had proceeded to the meeting venue of PWSC for voting.)

31. In response to Mr CHUNG Kwok-pan's concern, Mr CHOW Wai-shun said that under the current admission policy, HKU would provide interview opportunities for those applicants whose academic results were marginally below the admission requirement. He understood that City U also offered interview opportunities for those applicants who had failed in their first attempt for gaining admission to PCLL.

32. Mr Edward CHAN said that, at present, around 80% to 90% of the PCLL graduates could successfully get a trainee solicitor contract. He considered that an increase in the PCLL places would not change the above ratio because those who failed to enter into a trainee solicitor contract would shift to the barrister stream. Mr CHAN said that he was concerned that the quality and quantity of entrants to the Bar might be compromised as a result.

Admission of Juris Doctor students and overseas law graduates to PCLL

33. The Chairman said that for City U, applications for admission to PCLL submitted by LLB and JD graduates would be assessed separately. She enquired about the situation in the other two law schools. In reply, Mr CHOW Wai-shun advised that the number of JD places in HKU was relatively small.

34. Prof Stephen HALL said that CUHK took the largest number of JD students among the three law schools in Hong Kong. According to the latest figures, more than half of the JD students (120 out of 200 to 220 JD students) had applied for admission to PCLL and the successful rate of gaining entry to PCLL was high. Prof HALL added that there was a substantial number of JD students, in particular those taking part-time programme, who was not going to join the legal profession but studying for career advancement in other fields.

35. In view of the growing number of PCLL places, the Chairman asked whether more opportunities would be given to overseas law graduates who applied for admission to PCLL. In response, Mr CHOW Wai-shun said that HKU tended to examine the suitability of overseas law graduates for admission to the PCLL programme more stringently to ensure that the standard would be on par with local graduates. He also advised that overseas law graduates who

failed to gain admission to HKU's PCLL might be due to various reasons, including failure to provide necessary documentary proof.

Legal executive training

36. Mr Holden CHOW shared the views of Mr Danny GITTINGS, Associate Professor of the HKU School of Professional and Continuing Education, regarding recommendation 4.5 of the Final Report (i.e. exploring the feasibility of developing a more advanced legal executive qualification, leading to direct entry to PCLL). He considered it worthy of studying this feasibility of setting up a mechanism to recognize the experience of those experienced legal executives who might not have legal qualifications and providing them with opportunities to become a lawyer. Prof Geraint HOWELLS considered the recommendation was worth further exploration and might provide a better alternative than the proposed LSE.

Conclusion and follow-up actions

37. The Deputy Chairman said that he had prepared a list of questions relevant to the subject under deliberation for answering by the Law Society after the meeting. The Chairman agreed to pass the list to the Law Society for reply. She also appreciated the various views and opinions given by deputations and members on this subject.

(Post-meeting note: The list of questions was sent to the Law Society on 27 June 2018.)

IV. Implementation of the recommendations made by the Law Reform Commission of Hong Kong

(LC Paper No. CB(4)1249/17-18(05) - Law Reform Commission of Hong Kong's paper on implementation of its recommendations

LC Paper No. CB(4)1249/17-18(06) - Paper on the implementation of the recommendations made by the Law Reform Commission of Hong Kong prepared by the Legislative Council Secretariat (updated background brief))

38. At the invitation of the Chairman, Secretary for Justice ("SJ"), in her capacity as Chairman of the Law Reform Commission of Hong Kong ("LRC"), briefed members on the progress of implementation of the recommendations made by LRC by relevant bureaux and departments, details of which were set out in the LRC Secretariat's paper (LC Paper No. CB(4)1249/17-18(05)).

Proposals under consideration or in the process of being implemented

39. The Deputy Chairman indicated that the general public, in particular the legal sector, was concerned about LRC's recommendation of introducing a class action regime in Hong Kong. He enquired about the progress of work of the cross-sector working group set up by DoJ to study the relevant LRC's recommendation ("the Working Group") and the proposed timetable for the Administration to submit its report to the Panel for discussion and consideration.

40. In response, SJ advised that the subject matter involved in the study of implementing a class action regime was technical and very complicated. As such, more time was needed for the Working Group and its sub-committee to carry out their work and the timetable was not yet available. She further informed members that up to March 2018, a total of 21 meetings had been held by the Working Group and 28 meetings by the sub-committee under the Working Group.

41. In response to the Deputy Chairman's further enquiry about the progress of introducing conditional fees for arbitration in Hong Kong, SJ said that the Advisory Committee on Promotion of Arbitration was considering whether to conduct a consultation on this issue, and would map out the way forward after thorough deliberation on the matter.

42. Dr Junius HO pointed out that, in accordance with the Limitation Ordinance (Cap. 347), no action to recover landed property was allowed after 12 years from the date upon which the right of action accrued to him. He further said that, as the existing deeds registration system gave no guarantee of title, even if a person was registered as the owner of a property, there might still be uncertainties or defects in his title to the property and, therefore, the title to land was relative and depended ultimately upon possession. Dr HO said that, as this might give rise to possible unfair situation caused by adverse possession to those registered owners, the Administration should speed up the implementation of LRC's recommendations on adverse possession.

43. The Chairman shared Dr Junius HO's views that the provisions on adverse possession might be unfair to some registered owners. Nonetheless, it was noteworthy that the main justification for adverse possession was to protect

persons who had long uninterrupted occupation of a land from stale claims and to encourage owners not to sleep on their rights. As such, she considered that when considering the issues of adverse possession, the Administration should strike an appropriate balance between protecting the rights of the registered owners and the occupants.

44. Regarding the recommendations made in LRC's report on "Privacy — Part 3: Stalking", the Chairman said that though there were divergent views over the implications of the recommendations on constitutional rights, including freedom of the media and freedom of expression, and to protect individuals from harassment, the Administration should continue to closely monitor the need to introduce anti-stalking legislation to criminalize stalking in Hong Kong as well as overseas experience of implementing anti-stalking legislation.

Projects under study by the Law Reform Commission of Hong Kong

45. Noting that two sub-committees had been established under LRC to consider the issues of access to information and archives law respectively, Mr Charles MOK enquired about the latest progress of their work and asked when LRC would promulgate the relevant findings. The Deputy Chairman also urged LRC to expedite its study progress on archives law so as to enhance the government records management work as soon as practicable.

46. In response, SJ and Secretary of LRC said that the studies on access to information and archives law were in the final stage. The Archives Law Sub-committee and the Access to Information Sub-committee of LRC were working towards the target of publishing respective consultation papers within 2018 to seek the views of the public thereon.

Resources for the Law Reform Commission of Hong Kong

47. The Chairman said that LRC played an important role in the development and promotion of effective law reform and had considered diverse subjects for law reform including commercial arbitration, interception of communications, etc. In view of the heavy workload of LRC, the Chairman enquired whether more resources would be allocated to enhance the efficiency and operation of LRC.

48. The Deputy Chairman also pointed out that, given that LRC members were working on a voluntary basis, inadequate manpower resources in the LRC Secretariat might have prolonged the consultation process and the study of legislative proposals. He suggested that, in addition to the existing members who were working on a part-time basis, some full-time members should be

engaged. Furthermore, the Administration should allocate more manpower resources to improve the working efficiency of LRC, and engage more staff with legal training to enhance the professional support to the work of LRC.

49. In response, SJ advised that when considering the preliminary outcome of the study conducted by LRC to consider various options to enhance the efficiency and operation of LRC at its meeting on 20 December 2017, the Panel was in general supportive of the option of maintaining the current LRC and sub-committee structure but enhancing the LRC Secretariat support. Secretary of LRC informed members that, after consolidating the views of the Panel, LRC and the relevant bureaux, DoJ would come up with detailed staffing proposals for the LRC Secretariat and other relevant proposals.

Implementation progress

50. Dr Junius HO noted with concern that, of the 65 reports which had been published by LRC since 1982, only 35 reports had been implemented in full after 36 years. He expressed the concern that, given the long time taken by the Administration for considering LRC's recommendations in its various reports (such as Report no. 38 on "The regulation of debt collection practices" published in July 2002), LRC's recommendations might have become obsolete. Dr HO suggested that the Administration should establish benchmarks and indicators to monitor the implementation progress of LRC's recommendations.

51. In reply, SJ said that in order to address public concerns about the delays in implementing LRC's proposals, the Director of Administration had issued a set of guidelines in October 2011. Under these guidelines, bureaux and departments having policy responsibility over any LRC's report were required to give full consideration to LRC's recommendations and provide, within 12 months of the publication of the report, a detailed public response setting out which recommendations they accepted, rejected or intended to implement in modified form. The guidelines also required, within six months of publication of the report, bureaux and departments to provide at least an interim response which should set out a clear timetable for completion of the detailed response and the steps taken so far. In addition, since 2012, SJ had presented annual reports to the Panel on implementation of LRC's reports, the annex to which would indicate the time involved in the implementation process.

52. SJ further explained that in the light of the policy and practical implications of the issues involved, it was difficult to set a benchmark or an indicator to monitor the implementation of some of the recommendations. Having said that, the Administration would spare no effort to implement LRC's recommendations and expedite its implementation progress whenever possible and practicable.

V. Law Reform Commission of Hong Kong's consultation paper on miscellaneous sexual offences and consultation paper on periodical payments for future pecuniary loss in personal injury cases

(LC Paper No. CB(4)1109/17-18(01) - Consultation paper on miscellaneous sexual offences

LC Paper No. CB(4)1109/17-18(02) - Executive summary of consultation paper on miscellaneous sexual offences

LC Paper No. CB(4)1249/17-18(07) - Consultation paper on periodical payments for future pecuniary loss in personal injury cases

LC Paper No. CB(4)1249/17-18(08) - Executive summary of consultation paper on periodical payments for future pecuniary loss in personal injury cases

LC Paper No. CB(4)1295/17-18(01) - Submission from the Hong Kong Bar Association)

Consultation paper on miscellaneous sexual offences

Briefing by the Law Reform Commission of Hong Kong

53. At the invitation of the Chairman, Mr Peter DUNCAN, SC, Chairman of the Review of Sexual Offences Sub-committee of LRC ("the Review Sub-committee"), highlighted the main recommendations contained in the consultation paper on miscellaneous sexual offences, details of which were set out in LC Paper No. CB(4)1109/17-18(01). He also informed members that the consultation paper was the third and final part of the overall review of the substantive sexual offences¹ and a final report would be compiled in respect of

¹ In September 2012, the Review Sub-committee issued the consultation paper on rape and other non-consensual sexual offences, which represented the first of the three consultation papers issued on the overall review. In November 2016, the Review Sub-committee issued the consultation paper on sexual offences involving children and persons with mental impairment, which represented the second of the three consultation papers issued on the overall review.

all these three papers. This consultation would last for three months from 16 May till 15 August 2018.

Members' views

54. Dr Helena WONG expressed appreciation for the Review Sub-committee's efforts in making preliminary proposals for the reform of law concerning miscellaneous sexual offences. She said that on behalf of the Democratic Party, she in general supported the recommendations set out in the consultation paper.

55. Dr Helena WONG pointed out that in Chapter 1 of the consultation paper, the Review Sub-committee recommended that the new offence of incest should not be extended to cover step-parents/foster-parents while public views would be gauged on whether it should cover adoptive parents. However, she also noted that according to paragraph 1.100 of the consultation paper, the UK Review Group considered that the new offences should extend to cover "other persons living in the household and in a position of trust or authority over a child". In this regard, Dr WONG suggested that the offence of incest should be extended to cover adoptive parents, step-parents and foster-parents in order to better protect adoptive siblings, step-children and foster-children.

56. In response to Dr Helena WONG, Mr Eric CHEUNG, member of the Review Sub-committee, advised that as children were already protected under the Crimes Ordinance (Cap. 200) at present, and the proposed offences recommended in the previous consultation paper on sexual offences involving children and persons with mental impairment would cover underage children, the Review Sub-committee considered that there was no need to extend the offence of incest to cover step-parents and foster-parents given that they had no blood relation with the step-child/foster-child.

57. As regards adoptive parents, Mr Eric CHEUNG said that the Review Sub-committee did not see any justification for a distinction to be drawn between adoptive parents and natural parents since some children who were adopted at a very young age might not know that their adoptive parents were not their natural parents and, besides that, adoptive parents undertook lifelong trust and responsibility to their adopted children.

58. Mr Eric CHEUNG further explained that the offence of incest had all along been covering sexual activity between close family members. To extend the proposed new offence of incest to cover "other persons living in the household and in a position of trust or authority over a child" would bring the scope of incest beyond sexual activity between close family members, and a blood relation did not exist between such persons and the respective child.

Such extension might be too wide an extension of the scope of this offence and hence should be studied very carefully.

59. Mr CHAN Chi-chuen noted that, while the Review Sub-committee's original plan was to issue four consultation papers in respect of the overall review of the substantive sexual offences, the Review Sub-committee had now decided to issue three consultation papers first and return to the fourth part on sentencing when the overall review was completed. Mr CHAN relayed the concerns of some interest group members that they would not have the opportunities to discuss sentencing on the homosexual or homosexual-related offences at an earlier stage, and their worries that the proposed penalties might be overly severe.

60. In response, Mr Eric CHEUNG and Secretary of LRC advised that the Review Sub-committee would collate the public views received from the three parts of the overall review of the substantive sexual offences according to its guiding principles, namely, protective principle, gender neutrality, respect for sexual autonomy, and avoidance of distinctions based on sexual orientation. The Review Sub-committee would adopt the same guiding principles when considering the issues on sentencing. They assured members that adjustment to its original work plan would not have any adverse impact on the overall review.

61. In view of the Review Sub-committee's recommendations that some of the homosexual or homosexual-related offences as stipulated in sections 118B, 118G, 118J and 118K of Cap. 200 be abolished, Mr CHAN Chi-chuen further enquired whether the Review Sub-committee would also consider abolishing similar homosexual or homosexual-related offences in other sections of Cap. 200, such as sections 118C, 118D, 141(b) and 141(c), in the present consultation exercise to ensure consistency in the law.

62. In response, Mr Eric CHEUNG explained that the Review Sub-committee had previously reviewed some of the homosexual or homosexual-related offences, such as homosexual buggery with or by man under 16 as stipulated in section 118C of Cap. 200, and recommended their abolition. Having said that, the Review Sub-committee would take note of Mr CHAN Chi-chuen's view and follow up as appropriate.

63. Mr CHAN Chi-chuen also indicated that the term "同性" was sometimes used as the Chinese rendition of the term "homosexual" in the consultation paper. He said that the Chinese term "同性戀" should be used instead and urged the Review Sub-committee to improve the clarity and consistency of the Chinese and English texts of the consultation paper.

Mr Eric CHEUNG replied that he would relay Mr CHAN's view to the translation team for consideration.

64. In response to Mr CHAN Chi-chuen's proposal to conduct a special meeting to receive views from deputations on the consultation paper on miscellaneous sexual offences before the closing date of the public consultation exercise, i.e. 15 August 2018, the Chairman instructed the Clerk to Panel to consult members' views on Mr CHAN's proposal.

(Post-meeting note: At its regular meeting on 18 July 2018, the Panel received views from deputations on the consultation paper on miscellaneous sexual offences.)

Consultation paper on periodical payments for future pecuniary loss in personal injury cases

Briefing by the Law Reform Commission of Hong Kong

65. At the invitation of the Chairman, Mr Raymond LEUNG, SC, Chairman of the Periodical Payments for Future Pecuniary Loss in Personal Injury Cases Sub-committee of LRC ("the Periodical Payments Sub-committee") briefed members on the consultation paper on periodical payments for future pecuniary loss in personal injury cases, which was detailed in LC Paper No. CB(4)1249/17-18(07). He explained that the purpose of the consultation paper was to identify the problems of the current law and practices in assessing damages, in particular future pecuniary losses in personal injury cases, and the consultation period was from 25 April to 24 August 2018.

Views of the Hong Kong Bar Association

66. Mr Nicholas PIRIE presented the views of the Bar Association, details of which were set out in its submission (LC Paper No. CB(4)1295/17-18(01)). In gist, the Bar Association was of the view that if periodical payment orders ("PPOs") were to be introduced in Hong Kong, the insurance industry might encounter a number of challenges, such as the guarantee arrangements which were presently only available in respect of employees' compensation and motor insurance. In order that PPOs would work in Hong Kong, the Bar Association suggested setting up a fund² to be administered by the relevant institutions which were considered to be financially secured as paying parties for court ordered periodical payments, such as the Motor Insurers' Bureau of Hong Kong.

² The Bar Association suggested setting up the Third Fund in its submission (LC Paper No. CB(4)1295/17-18(01)).

Members' views

67. Mr CHAN Kin-por concurred with the Bar Association's views on the challenges to be faced by insurance industry if PPOs were to be introduced into Hong Kong. He said that establishing a discount rate mechanism would pose a huge challenge to both the insurers and reinsurers. In this connection, he said that the insurance industry was of the view that an independent study on the impacts of the proposed introduction of PPO should be carried out before any decision was taken and the study should be properly scoped to cover all major stakeholders. Mr CHAN further said that the subject of discount rate should be taken forward as a separate and independent exercise with involvement of the newly established Insurance Authority, where appropriate. He expressed that the insurance industry would like to strike a right balance between the interests of the claimants and that of the whole community.

68. In response, Mr Raymond LEUNG, SC replied that in view of the concerns expressed by the insurance industry, the Periodical Payments Sub-committee had already set up a meeting with the Hong Kong Federation of Insurers to be held on 3 July 2018 to consult its views on the subject matter.

(At 6:56 pm, the Chairman proposed and members agreed to extend the meeting for 15 minutes to 7:15 pm. At 7:08 pm, members raised no objection to the Chairman's proposal to further extend the meeting for 15 minutes to 7:30 pm.)

69. The Deputy Chairman referred to question 3 subsection (2) raised in the consultation paper, which was in relation to whether the power to award periodical payment should be generally vested in the court to be exercised in circumstances as it deemed just and fair or whether such power should be limited to cover a specific class of personal injury cases, and, if so, how the class of cases was to be defined. The Deputy Chairman requested the Periodical Payments Sub-committee to provide further details, such as the court's major considerations, to assist members of the public to have a better understanding about the subject.

70. In reply, Mr Raymond LEUNG, SC advised that the Periodical Payments Sub-committee had studied the experiences of other jurisdictions on periodical payments for future pecuniary loss in personal injury cases. In certain jurisdictions under study, the circumstances under which the court could review the terms of PPO were very limited. To cater to the event that major deterioration or substantial improvement of the condition of the claimant of periodical payment was anticipated, there would be very detailed criteria set out at the time PPO was made for either party to come back to the court to seek a

variation of PPO, as well as the limitation on the number of applications that could be made.

71. Mr Raymond LEUNG, SC said that as the abovementioned method of compensation was different from the existing law in Hong Kong, the Periodical Payments Sub-committee decided to consult the public on what factors and limitations, if any, should be imposed on the court's power to award and review PPOs in order to make recommendations to do justice to all parties concerned.

72. In response to the Deputy Chairman's further enquiry, Mr Raymond LEUNG, SC explained that as the time needed for the Periodical Payments Sub-committee to make recommendations depended on the number of submissions received during the consultation period, it was difficult to draw up a timetable for members' information at the present stage. Having said that, the Periodical Payments Sub-committee would press ahead to produce a final report within about a year. If a more definitive recommendation could be formulated, the Periodical Payments Sub-committee would also prepare a draft of the legislation to expedite the matter.

VI. Any other business

73. There being no other business, the meeting ended at 7:24 pm.

Panel on Administration of Justice and Legal Services

**Meeting on Monday, 25 June 2018, at 4:30 pm
receiving public views on "Legal education and training in Hong Kong"**

Summary of views and concerns expressed by deputations/individuals

No.	Name of deputation/individual	Submission/Major views and concerns
1.	Hong Kong Bar Association	<ul style="list-style-type: none"> • presentation of views as set out in submissions (LC Paper Nos. CB(4)1293/17-18(01) and CB(4)1295/17-18(01) (English version only))
2.	The Law Society of Hong Kong ("Law Society")	<ul style="list-style-type: none"> • Due to the lack of transparency in the admission policy of the Postgraduate Certificate in Laws ("PCLL") programme of the three universities, and insufficient PCLL places, some local and most overseas law graduates having the ability to qualify as solicitors were deprived of the opportunity and legitimate expectation to join the legal profession. • There were views that some students graduating from the three different PCLL programmes did not reach a unified level of high standard required for joining the solicitor branch of the profession. • Without an independent unified examination, there was no fair opportunity to test and prove students' abilities on equal footing. • The Law Society was exercising a statutory power under rule 7 of the Trainee Solicitor Rule (Cap. 159J) to set up the common entrance examination ("CEE"), which was publicly announced in January 2016. However, the universities had not given full cooperation to implement CEE.

No.	Name of deputation/individual	Submission/Major views and concerns
		<ul style="list-style-type: none"> • The Law Society was considering exercising the powers under rule 7(A)(ii) of Cap. 159J to establish the Law Society Examination ("LSE"), which would be an additional pathway to the solicitor branch of the legal profession, and was independent from the current PCLL programmes. • To pass LSE, students would have to achieve the same standard expected as a PCLL graduate. The purpose of LSE was to provide an equal opportunity to all intending solicitors to enter the profession so long as they could reach the requisite standard.
3.	Law Association, The Hong Kong University ("HKU") Students' Union	<ul style="list-style-type: none"> • presentation of views as set out in submission (LC Paper No. CB(4)1321/17-18(01) (Chinese version only)
4.	School of Law, City University of Hong Kong ("City U")	<ul style="list-style-type: none"> • presentation of views as set out in submission (LC Paper No. CB(4)1405/17-18(01) (English version only)
5.	Department of Professional Legal Education, HKU	<ul style="list-style-type: none"> • The Law Society had sent templates of CEE questions and invited the views of PCLL providers. The three law schools did so and had jointly asked the Law Society to follow up on the matter but there was no response from the Law Society. HKU was concerned about the reasons why the Law Society suddenly proposed to establish LSE. • The announcement of the Law Society to introduce CEE without full justifications and details had caused confusion to students in deciding their routes to take for entering the legal profession.

No.	Name of deputation/individual	Submission/Major views and concerns
		<ul style="list-style-type: none"> • The University was concerned about the views of the Law Society on (a) the number of PCLL places to be offered by the three universities and the admission requirements; and (b) in respect of the admission policy, whether other factors should be considered apart from academic results and full-time legal working experience.
6.	Law Students' Society, City U Students' Union	<ul style="list-style-type: none"> • The establishment of LSE, which aimed to provide a second chance for those who failed to gain admission to PCLL to enter the solicitor profession, would raise a concern on fairness to those intending barristers. • If a unified PCLL programme was provided, more confusion might be caused to students from the three law schools, which offered different courses in their undergraduate programme, to calculate which courses should be taken which would facilitate their entry to the unified PCLL. • Different law schools had provided different standards of education and courses, it might cause confusion to students in choosing what courses they should study if they were to enter PCLL. • Universities were admitting too many JD students, which increased the competition for PCLL places among graduates of Bachelor of Laws and Juris Doctor programmes.
7.	Faculty of Law, The Chinese University of Hong Kong ("CUHK")	<ul style="list-style-type: none"> • CUHK supported the first half of recommendation 6.4 in the final report of the consultants of the Standing Committee on Legal Education and Training ("Final Report"), i.e. if any system of common assessment was adopted, PCLL provider must be involved in paper setting and examination arrangements.

No.	Name of deputation/individual	Submission/Major views and concerns
		<ul style="list-style-type: none"> • CUHK was open to all discussions regarding the format and content of PCLL, as well as views of the Law Society and all other stakeholders in the matter of legal education. The representative of the Law Society in the academic board of the PCLL programme of CUHK had never presented any serious questions about the quality of CUHK's PCLL programme. • CUHK disagreed to the Law Society's proposals to establish CEE and LSE. The proposed timelines for the establishment of the above examinations were too optimistic. • CUHK fully supported recommendations 6.1 of the Final Report, i.e. a moratorium be called on CEE.
8.	HKU School of Professional and Continuing Education	<ul style="list-style-type: none"> • presentation of views as set out in submission (LC Paper No. CB(4)1268/17-18(01) (English version only)