

**D R A F T**

**立法會**

***Legislative Council***

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

**Minutes of meeting  
held on Wednesday, 13 October 1999 at 8:30 am  
in the Chamber of the Legislative Council Building**

**Members Present** : Hon Margaret NG (Chairman)  
Hon Jasper TSANG Yok-sing, JP (Deputy Chairman)  
Hon Martin LEE Chu-ming, SC, JP  
Hon James TO Kun-sun  
Hon Ambrose LAU Hon-chuen, JP  
Hon Mrs Miriam LAU Kin-yeet, JP  
Hon Emily LAU Wai-hing, JP

**Member Attending** : Hon Ronald ARCULLI

**Member Absent** : Hon Albert HO Chun-yan

**Public Officers Attending** : Department of Justice  
Ms Elsie LEUNG, JP  
Secretary for Justice  
  
Mr Robert ALLCOCK  
Solicitor General (Acting)  
  
Mrs Pamela TAN  
Director of Administration and Development  
  
Mr Jonathan DAW  
Legal Adviser, Legislative Affairs

Chief Secretary for Administration's Office

Mrs Carrie YAU  
Director of Administration

Ms Miranda CHIU  
Deputy Director of Administration

**Clerk in Attendance** : Mrs Percy MA  
Chief Assistant Secretary (2)3

**Staff in Attendance** : Mrs Justina LAM  
Assistant Secretary General 2

Mr Paul WOO  
Senior Assistant Secretary (2)3

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**Briefing by the Secretary for Justice and the Director of Administration on the Chief Executive's Policy Address 1999**

(Address by the Chief Executive at the Legislative Council meeting on 6 October 1999; a booklet on Policy Objective for Department of Justice - "Upholding the Rule of Law"; a booklet on Policy Objective for Administration Wing of the Chief Secretary for Administration's Office - "Administrative Redress and Legal Aid")

The Chairman welcomed the Secretary for Justice (SJ), the Director of Administration (D of A) and other representatives from the Administration to the meeting. She invited SJ and D of A to brief members on the policy objectives of the Department of Justice and the Administration Wing respectively before responding to questions raised by members. (The Opening Statements of SJ and D of A tabled at the meeting and attached at Appendices I and II refer.)

Policy objective of Department of Justice

2. SJ highlighted the major issues covered in her Opening Statement on the policy objective for Department of Justice (D of J) as follows -

*Upholding of the rule of law*

- (a) One key aspect of the rule of law was that the Government was subject to the law. Judicial review of Government's administrative action, which had a long and important history in the common law world, continued to be a major feature of the legal system of Hong Kong. In 1998, civil proceedings were brought against the Government in 947 cases, 105 of which involved the judicial review of Government decisions. With the implementation of the Basic Law, litigants could now have recourse to the courts in order to challenge legislation on the basis that it contravened the guarantees in the Basic Law.
- (b) In this new development of constitutional litigation, the controversy brought about by some of the courts' decisions should come as no surprise, given the fact that when the courts were required to decide on the constitutionality of legislation, they were drawn into issues of greater policy content than was usually the case. Furthermore, in the case of the Basic Law, there was the highly debatable issue of who was to interpret the Law. By virtue of Article 158, the two different traditions in the common law world and the civil law world relating to interpretation of legislation were woven into the Basic Law. Article 158 stated that the power of interpretation of the Basic Law should be vested in the Standing Committee of the National People's Congress (NPCSC). It went on to give the courts of the Hong Kong Special Administrative Region (HKSAR) the power to interpret the Basic Law in adjudicating cases, subject to certain limitations. This sharing of the power of interpretation provided under the Basic Law was part of the new constitutional order of the HKSAR and it fully complied with the rule of law.

*Key results areas*

- (c) Significant progress had been made with regard to legal co-operation with the Mainland, which helped develop confidence in Hong Kong as an international business and financial centre. Other areas in which marked results had been achieved included, inter alia, greater use of Chinese in the law, the promotion of better understanding of the Basic Law and the rule of law and the development of mutual legal assistance with other jurisdictions.

*New initiatives*

- (d) The D of J would implement 16 new initiatives in relation to the work of its various divisions. In addition, the Department would maintain a continuing dialogue with the two legal professional bodies concerning the need for a comprehensive review of legal education, which was being

actively considered by a Working Group. The first stage of the review was expected to begin early next year.

*Legal Adviser on legislative affairs*

- (e) The recent appointment of a specialist consultant who was a former LegCo Legal Adviser to advise on legislative affairs would contribute to developing parliamentary practices appropriate to Hong Kong's unique constitutional status.

Policy objective of the Administration Wing

- 3. D of A summarized the policy objective of the Administration Wing, focusing on two major fronts –

*Maintaining public confidence in independent redress*

- (a) Fair, open and accessible avenues for members of the public to lodge appeals and complaints against administrative decisions and measures included the Administrative Appeal Board, the Municipal Services Appeals Board, the Ombudsman as well as the Visiting Justices of the Peace (JPs) under the JP System. The operation of these mechanisms for redress had been improved in the past year through increased manpower and resources for the two Appeal Boards so that appeals could be heard more efficiently, and extension of the jurisdiction of the Ombudsman to cover four additional statutory bodies. For the Visiting JP System, the Administration Wing had formulated a number of improvement proposals following the completion of a review of the System, which would be implemented in the coming year. Constant efforts would be made to ensure that these redress channels would become more effective and transparent.

*Provision of efficient legal aid services*

- (b) In the previous year, the Administration had completed its consideration of the recommendations of the Legal Aid Services Council and had come to the conclusion that the establishment of an independent legal aid authority without a ceiling on legal aid expenditure was not in the best interest of potential users of the legal aid scheme. According to the experience of a number of overseas jurisdictions (Australia, Canada, New Zealand and the UK) where an independent legal aid body was in place, there was invariably the pressure to contain costs through capping the funds provided for legal aid and narrowing the scope of service. Furthermore, to replace the Legal Aid Department (LAD) with an independent legal aid authority with an unlimited budget would create other difficult problems

for the Administration, such as accountability as to the means to ensure effective use of resources and efficient operations of the independent body. The necessity to establish an independent legal aid authority was further limited because, according to the consultancy study commissioned by the Legal Aid Service Council (LASC), the majority of the community groups consulted were of the view that legal aid was administered independently in Hong Kong. The public was more concerned about the quality of legal aid service than the status of the body providing the service. Taking into account all these factors and the possible unsettling effect which the disestablishment of the LAD could have on its staff, the Administration was of the view that the present legal aid system with an open-ended budget was best placed to achieve its objective.

- (c) The overriding objective of the provision of legal aid was to ensure that no one with reasonable grounds for pursuing a legal action was prevented from seeking justice because of lack of means. Over the past 10 years, the effort of the Administration to strengthen legal aid services had resulted in a six-fold increase in legal aid expenditure in terms of litigation cost, rising from \$81 million in 1988/89 to \$518 million in 1998/99. The LAD's estimated expenditure on litigation cost for 1999/2000 was \$669 million.
- (d) Arising from the Legal Aid Policy Review, a total of 17 recommendations, which sought both to expand the scope of the legal aid schemes and to improve existing services, were being progressively implemented through administrative and legislative means. A series of new services, such as provision of legal assistance to the next of kin of the deceased for cases of significant public concern and for "properly interested persons" in coroner's inquests, would be provided upon the enactment of the Legal Aid (Amendment) Bill 1999. The recommendations of the Review would allow 58% of the total number of households (over one million families) in Hong Kong to become financially eligible for legal aid, up from 48% (about 0.8 million families) under the existing arrangement.

#### Points raised by members

##### *Rule of law and protection of human rights*

4. Mr James TO was concerned that for certain law enforcement activities carried out in strict secrecy, such as police "undercover" operations, there was no effective external monitoring mechanism in place to guard against possible illegal conduct or abuse of human rights by Government enforcement agencies. He said that in relation to a number of recent cases, the courts had criticized the enforcement agencies for the way they conducted investigations and secured evidence. Mr TO asked whether the D of J had promulgated guidelines on the practices and procedures to be followed by

Government officers in conducting law enforcement activities to ensure full compliance with the rule of law, and to adequately safeguard the rights of citizens, the suspects and the accused.

5. SJ responded that one of the major roles of the D of J was to improve prosecutorial standards of Government law enforcement agencies. This included, inter alia, advising on the parameters of legitimate evidence gathering, interviewing of suspects and witnesses as well as deciding on whether or not to prosecute based on the weight of the evidence available. The Department had issued a comprehensive prosecution policy which was open and subject to public scrutiny. She added that whilst it was the D of J's duty to advise on the admissibility of evidence having regard to precedent cases and the requirements and spirit of the law, it was for the courts to lay down the directives as to what extent evidence of agent provocateurs should be used and the way in which evidence should be procured. SJ further advised that there were mechanisms under the present system, such as the Operations Review Committee of the Independent Commission Against Corruption, to look into individual cases to ensure that no injustice was done to any party.

6. On the points raised by Mr James TO, SJ undertook to revert to the Panel with a written response after the meeting.

*(Post-meeting note : SJ's reply has been circulated to members vide LC Paper No. CB(2)151/99-00(01) dated 20 October 1999.)*

7. Mr Martin LEE said that he did not agree with the point made by SJ in her statement presented to the Panel that "...judicial independence and the rule of law are as strong as ever". He said that the NPCSC's interpretation of the Basic Law which overturned the ruling handed down by the Court of Final Appeal (CFA) on the right of abode issues was a counter-example of the SJ's remark. Referring to another comment by SJ that "...members of the community are working together to ensure that there will be a positive outcome", Mr LEE opined that "a positive outcome" should mean amending the Basic Law rather than seeking an interpretation by the NPCSC.

8. Ms Emily LAU pointed out that the United Nations Human Rights Committee (UN Committee) would convene a hearing on 1 November 1999 to discuss the HKSAR Government's report on the implementation of the International Covenant on Civil and Political Rights (ICCPR) after the Reunification. She asked how SJ could reconcile her remarks with the concerns about setbacks in civil liberties and the rule of law in the HKSAR expressed by the great majority of non-government organizations sending delegations to the UN Committee.

9. SJ replied that the Administration had explained on a number of previous occasions to LegCo Members that an interpretation of the Basic Law by the NPCSC was constitutionally in order by virtue of Article 158 of the Basic Law. The decision of the Chief Executive to request the State Council to seek an NPCSC interpretation

had also been supported by a majority of LegCo Members. SJ considered that it would be more appropriate for her to defer making further comments at this point in time, as the matter of NPCSC interpretation of the Basic Law might be an issue in a case to be heard by the CFA shortly.

10. Regarding judicial independence, SJ advised that two retiring senior judges had on record said that the independence of the Judiciary had not been interfered with. She added that Mr Justice Findlay had made the following comment to refute allegations that the independence of the Judiciary was under threat -

"It has now been two years since the Handover and I can honestly say that there has been no interference at all. I know the suggestions from some sources that the right of abode case amounted to interference. I think that is nonsense."

11. In relation to the NPCSC interpretation, SJ said that Mr Justice Mortimer was quoted to have said -

"I don't think it has had the slightest impact on the independence of the Judiciary."; and

"The civil system of law moves more towards legislative interpretation. That fact alone does not, as I see it, impinge on judicial independence at all. It simply means that there is a further means of making a decision in certain very limited circumstances."

12. SJ said that there were always concerns about democratic development in the HKSAR whenever the UN Committee held hearings to discuss the HKSAR Government's report on ICCPR. The concerns were not unexpected as Hong Kong had now entered into a new era of constitutional transition, and legislation dealing with highly controversial issues was judged against a constitution which was drafted in broad terms. With the implementation of the Basic Law, which was a constitutional document for the HKSAR, the rights and freedom of the residents and the preservation of the rule of law were well protected under the many guarantees set out in the Basic Law. These express guarantees served as a better means of protection of human rights and the rule of law than was the case before the promulgation of the Basic Law.

13. SJ added that the development of constitutional litigation was a striking demonstration of the rule of law in Hong Kong. She informed members that out of the 947 civil suits against the Government in 1998, the Government failed in 62 (6.5%) of the cases. Regarding those 105 cases involving judicial review of Government decisions, the Government lost in 17 (16%). These statistics in no way reflected that the Government had not been law-abiding.

14. In response to SJ's comments, Ms Emily LAU said that the protest of hundreds of legal practitioners against the decision to seek an NPCSC interpretation of the Basic

Law clearly demonstrated their genuine concern. Mr Martin LEE said that a number of judges had told him in private that they had worries about the rule of law in Hong Kong.

15. On the matter of constitutional change, the Chairman questioned the appropriateness of the analogy drawn by SJ between the enactment of the UK Human Rights Act (UK Act) and the interpretation of the Basic Law by the NPCSC in her statement. She pointed out that the former superimposed restrictions on the Executive authorities for the better protection of human rights, whereas the latter had led to quite a different and opposite effect.

16. Solicitor General (Acting) said that the UK Act expressly stated that the courts could not invalidate legislation on the ground that it was contrary to the Act. It was only up to the Legislature to amend legislation to bring it into line with the Act. Since 1991, Hong Kong had much strengthened the protection of human rights with the enactment of the Bill of Rights Ordinance. Moreover, since the implementation of the Basic Law, the courts in Hong Kong (but not their counterpart in England) could refuse to enforce legislation that was inconsistent with human rights guarantees specified in the Basic Law. Viewed in this perspective, there were in fact greater restrictions on the powers of the HKSAR Government than on those of the UK Government.

*(Post-meeting note : An elaboration of the views expressed in the above paragraph has been provided in SJ's letter of 19 October 1999 and circulated to members vide LC Paper No. CB(2)151/99-00(01))*

17. Mr Ronald ARCULLI considered that it was within the constitutional framework of the Basic Law for the NPCSC to interpret provisions in the Basic Law. He opined that the disquiet surrounding the NPCSC interpretation arose from the failure of the Government to make it clear to the CFA in the first place that, before the Court passed judgment on the case before it, the Court should refer the matter of interpretation of the Basic Law to the NPCSC for a decision pursuant to Article 158 of the Basic Law. In his view, the decision of the Government to seek an NPCSC interpretation after the CFA had ruled on the case bewildered the public.

18. In rounding up discussion of the subject, the Chairman opined that the D of J was one of the most important departments of the Government. It was not enough for the Department to perform a role similar to that of a technical department of answering to the demands for services from the other branches of Government. Rather, the D of J had a significant role to play, namely in upholding the rule of law in Hong Kong. She said that she would like to see that safeguarding role performed by the Department more strongly and proactively.



Independent legal aid authority and legal aid related matters

19. Mr Martin LEE and Ms Emily LAU deplored the Administration's decision not to establish an independent legal aid authority to replace the LAD, contrary to the recommendation of the LASC. Mr LEE said that the reasons adduced by the Administration, such as resource implications and the possible impact on staff morale in LAD etc. should not be the prime considerations. The issue of overriding importance was to ensure the fair protection of users of legal aid services. He said that the setting up of an independent body would remove worries and anxieties about fairness and independence in the administration of legal aid, especially at this time when there was an increasing number of civil proceedings being brought against the Government.

20. The Chairman added that the Administration's decision had drawn strong criticisms from the legal profession which had been championing long and hard for the setting up of an independent legal aid body.

21. In response, D of A advised that in conducting the review, the Administration had focused its attention on the need for bringing real benefits to legal aid applicants. She said that the concern that legal aid was not administered fairly and independently was not justified, as evidenced by the fact that legal aid had been granted to the applicants in many cases involving huge litigation costs, such as in the right of abode cases. Furthermore, there were safeguards in the current system to protect the independence of legal aid administration. Such safeguards included, for example, a statutory requirement for the Director of Legal Aid (DLA) to consider all cases independently, and a mechanism whereby persons whose applications for legal aid were rejected by DLA could appeal to the Judiciary (Registrar, High Court). At present, the majority (about 75%) of the legal aid cases were briefed out to lawyers in private practice.

22. In reply to a question from Ms Emily LAU, D of A advised that there were about 1 000 appeals per year to the Judiciary against the DLA's decision not to grant legal aid. About 10% of the appeals were allowed.

23. Mrs Miriam LAU enquired about whether the LAD would consider assigning out a greater proportion of cases to private legal practitioners, thus allowing the LAD to focus its resources on processing legal aid applications and monitoring the assigned out cases. The Chairman said that she understood that most legally aided matrimonial cases were handled internally by the LAD.

24. D of A replied that the current brief-out rate was not an established policy. It could be adjusted depending on a number of factors, such as the availability of private lawyers who were prepared to take up the cases. In addition, it was considered necessary that a certain proportion of cases should be handled by in-house counsel of the LAD for the purpose of improving their experience and professional expertise.

She agreed to review the matter with DLA having regard to Mrs Miriam LAU's views.

#### Mutual legal assistance

25. Mrs Miriam LAU pointed out that reciprocal enforcement of judgments in civil and criminal matters was an important and urgent issue for the HKSAR. She enquired about the progress of obtaining authorization from the Central People's Government (CPG) to proceed with negotiations of bilateral agreements with other countries.

26. SJ advised that the principles relating to reciprocal juridical assistance between the HKSAR and the Mainland and between the HKSAR and other foreign states were set out in Articles 95 and 96 of the Basic Law. The HKSAR Government was currently working together with the Mainland authorities on specifying the mechanism for seeking the CPG's authorization for the purpose of enabling the HKSAR Government to negotiate arrangements with foreign jurisdictions regarding mutual enforcement of judgments in civil and criminal matters. Progress would be reported to the Panel in due course.

27. SJ further advised that at present, enforcement of judgments between jurisdictions could be dealt with either by way of litigation or by way of arrangements under a bilateral agreement. A recent development which had emerged was the proposed promulgation of an international convention to provide for arrangements for mutual enforcement of judgments between independent nations, without the need for negotiation on an individual case basis. Further developments were expected to come out of that study.

#### Introduction of bills into LegCo

28. Mr Ronald ARCULLI said that it was not uncommon that whenever the LegCo approached the last six months of its term, a large number of complicated bills were introduced by the Administration into the LegCo, thus creating difficulties for Members to complete proper scrutiny of the bills before the end of the LegCo term. He asked the Administration to take effective measures to improve the situation.

29. SJ responded that there was a Legislative Priorities Committee within the Administration in which policy bureaux and departments discussed and decided the priorities of bills to be introduced into the LegCo. She explained that the problem as envisaged by Mr ARCULLI was due, to a certain extent, to the fact that in the first year following the Reunification, the business of the Provisional Legislative Council was restricted to matters which were indispensable for the operation of the HKSAR. In addition, during the past two years, some unforeseen major events with far-reaching policy implications had occurred. These events led to the need for a recast of legislative priorities, and also placed a heavy burden on the Administration to introduce reforms and new legislation, sometimes within a very short period of time.

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SJ added that as far as law drafting was concerned, the Law Drafting Division of the D of J had to wait for the necessary drafting instructions from the policy bureaux concerned before it could proceed with its work.

30. D of A said that there was no question of the Administration holding up the introduction of bills into the LegCo until at a very late stage of its term. In the last 12 months, the Administration had introduced 120 pieces of legislation into the Council. It was expected that some 50 more bills would be introduced in the current legislative session. D of A said that she had conveyed Members' concern to the policy bureaux and urged them to introduce these bills not later than March 2000.

31. The meeting ended at 9:50 am.

Legislative Council Secretariat  
18 November 1999

**Secretary for Justice's Opening Statement at the  
Administration of Justice and Legal Services Panel Meeting  
on Wednesday, 13 October 1999**

Good morning, ladies and gentlemen. I am glad to have this opportunity to speak to you on the Department of Justice's Policy Objective, the progress made in the past twelve months on the various pledges made in previous years, and the new initiatives set out in our Policy Objective Booklet released last week.

**Policy Objective**

2. The Policy Objective of the Department of Justice is to uphold the rule of law, provide efficient and effective legal services to the Hong Kong Special Administrative Region Government, and to maintain and improve the present legal system.

3. In the past year, we had three targets at the policy objective level.

4. Our first target related to the rule of law. I will discuss this in a few moments' time.

5. The second target was to ensure that our legal services met the reasonable expectations of our clients. In this respect, I am pleased to report that we have been able to meet over 95% of our performance pledges in the past year. This is a good achievement but, of course, is no cause for complacency.

6. Our third target was to ensure that there is continuous improvement to the legal system. We have taken several initiatives in this respect. We introduced five relevant bills into the Legislative Council in the last session. Of these, the Theft (Amendment) Bill 1998 has been passed and has created a new statutory offence of fraud. The other four bills are still before the Council. Other initiatives to improve the legal system included promoting the greater use of Chinese in the law and developing mutual legal assistance with other jurisdictions. I will have more to say on these topics a little later.

7. Let me deal now with the rule of law. As honourable Members are aware, one key aspect of the rule of law is that the Government is subject to the law. No one should doubt that this is the case. Almost every day, cases are brought against the government in the courts. As you know, those cases are dealt with by a fearless, and strongly independent, judiciary. Judicial review of Government's administrative action has a long and important history in the common law world. It continues to be a major feature of our legal system. In 1998, for example, civil proceedings were brought against the Government in 947 cases, 105 of which involved the judicial review of Government decisions.

8. The implementation of the Basic Law has led to a major development in our legal system - the creation of constitutional litigation. Litigants can now have recourse to the courts in order to challenge legislation on the basis that it contravenes the guarantees in the Basic Law. This is a striking demonstration of the rule of law.

9. This development has led to controversy. But this should come as no surprise to us. If one looks at other common law jurisdictions where constitutional review of legislation is possible - the United States is of course the prime example - one finds that court decisions are frequently highly controversial. We must face the fact that, when courts are required to decide upon the constitutionality of legislation, they are drawn into issues that have a much higher policy content than is usually the case. This

is inevitable when legislation dealing in detail with highly controversial issues is judged against a constitution that is drafted in broad terms, and that may not expressly deal with those issues.

10. In the case of the Basic Law, there is an added complication. The Basic Law was promulgated by the National People's Congress, and provides the constitutional framework for the principle of one country, two systems. When it was being drafted, one key aspect was subject to great debate - namely who is to interpret the Basic Law? The drafters were faced with two different legal traditions. In the common law world, the judges interpret legislation. In the civil law world, it is not uncommon for the legislature to interpret its own legislation. Eventually, both traditions were woven into the Basic Law. Article 158 states that the power of interpretation of the Basic Law shall be vested in the Standing Committee of the National People's Congress. It then goes on to give the courts of the Hong Kong Special Administrative Region the power to interpret the Basic Law in adjudicating cases, subject to certain limitations. This sharing of the power of interpretation is part of our new constitutional order. The exercise of those powers of interpretation in accordance with the Basic Law fully complies with the rule of law.

11. We are still in the early days of implementing the Basic Law, and of understanding the full implications of constitutional litigation. My department is devoting a lot of attention to Basic Law issues. There are bound to be areas of controversy. But judicial independence and the rule of law are as strong as ever.

12. A common law system such as ours is capable of dealing with constitutional change without losing its commitment to the fundamentals we all hold dear. The United Kingdom is an example of this. Its entry to the European Union affected one of its longest legal traditions - that of Parliamentary sovereignty. It is now facing further constitutional changes as a result of devolution and the enactment of the Human Rights Act. Like this Legislative Council, the new Scottish legislature must comply with a written constitutional document, which limits its powers. No one is certain how these changes will impact upon the British legal system. But members of the community are working together to ensure that there will be a positive outcome. I hope that we can do the same here in Hong Kong, as we cope with our own constitutional transition.

### **Key Results Areas**

13. Let me turn now to my department's six Key Results Areas. In the past year, we have produced good results in all six areas. I am pleased to report that significant progress was made with regard to legal cooperation with the Mainland. Memoranda of understanding in respect of reciprocal arrangements for the service of judicial documents in civil and commercial proceedings, and in respect of the mutual enforcement of arbitral awards were signed on 14 January and 21 June this year respectively. I am sure that honourable Members will agree that the development of legal cooperation with the Mainland is beneficial to the people and businesses of Hong Kong. The achievements in the past year are a reflection of the goodwill on both sides and will help to develop confidence in Hong Kong as an international business and financial centre.

14. In the context of the 1998 Policy Address, my department announced 16 new commitments. Adding the 10 outstanding pledges made since 1994, the Department of Justice is accountable for 26 pledges. Of these:

- we have completed 15;
- we are on schedule on eight;

- two are under review; and
- we are endeavoring to speed up the progress on the one pledge that has fallen behind schedule.

15. I wish to highlight our achievements in three areas, namely the greater use of Chinese in the law, the promotion of the Basic Law and the rule of law, and the development of mutual legal assistance with other jurisdictions.

### **Use of Chinese**

16. We have taken several steps to promote the greater use of Chinese in the law. My department's English-Chinese Glossary of Legal Terms is an essential tool for developing consistent usage in bilingual legal terminology. In September 1998, the third edition of the glossary was published. We expect to publish the first edition of the Chinese-English Glossary of Legal Terms on schedule.

17. With regard to those criminal cases that were conducted in Chinese, we met our targets of handling in-house 100% of magistracy appeals and criminal appeals in the Court of Appeal; about 50% of trials in the District Court; and 100% of the trials in the Court of First Instance. Counsel in Prosecutions Division were provided with a regularly updated English-Chinese glossary of legal terms for use in criminal proceedings.

18. My department has also been producing bilingual court documents, and preparing bilingual government franchises, contracts and tender documents.

19. I continue to chair meetings of the Committee on Bilingual Legal System, which includes representatives from the Judiciary, Bar Association and Law Society. Early this year, the Committee launched a 3-month pilot project to translate important case precedents into Chinese. The experience gained from the pilot project will help us develop strategies for the selection and systematic translation of important judgments, which would facilitate the wider use of Chinese in court.

### **Promotion of the Basic Law and rule of law**

20. Turning to our promotional activities, in order to foster better understanding of Hong Kong's legal system and to instill public support for the rule of law, we have produced a new series of legal docu-dramas, which was screened on TVB from November 1998 to March 1999, and an educational video, which was distributed to schools, community organisations and civic education bodies. Publications on prosecution work and the law-making process, and a Basic Law Index, have also been distributed.

21. Members of my department took part in various public debates, which have contributed to a deeper appreciation of Hong Kong's legal system and the operation of our new constitutional order. We have also honoured our pledges

- first, to promote knowledge within the civil service of the Basic Law, and of the national laws that apply in the Hong Kong Special Administrative Region; and
- secondly, to promote public understanding of the department's work, aspects of the legal system, and the rule of law through our homepage, by organising and conducting overseas speaking engagements, by briefing numerous overseas visitors, attending overseas conferences, and (locally) by giving many talks and publishing many articles.

We will continue to promulgate understanding of the legal system in ways which will

benefit the public at large.

### **Mutual legal assistance**

22. With regard to mutual legal assistance with other countries, honourable Members will recall that the bilateral agreements that had, before Reunification, been extended to Hong Kong by the United Kingdom ceased to apply on 1 July 1997. Since then, my department has been giving priority to the establishment of new bilaterals. I am pleased to report that, in 1998, eight additional bilateral agreements were negotiated in respect of mutual legal assistance in criminal matters, surrender of fugitive offenders, and transfer of sentenced prisoners. This year six further bilaterals have already been negotiated, and negotiations for four other agreements are well advanced. We will commence negotiation of agreements on reciprocal enforcement of judgments in civil and criminal matters as soon as authorisation is obtained from the Central People's Government.

### **Other pledges**

23. Turning to our other pledges, we have fulfilled the pledges -

- to create an electoral resource library;
- to publish two reports and two consultation papers of the Law Reform Commission;
- to provide support for new activities relating to information technology, telecommunications and broadcasting, and the implementation of the Mandatory Provident Fund;
- to provide advice on the establishment of the new Information Technology and Broadcasting Bureau, and on the re-organisation of district organisations;
- to improve our ability to conduct criminal appeal cases which go to the Court of Final Appeal, and to conduct all significant criminal cases which proceed, or seek leave to proceed, to that Court; and
- to establish a permanent Information Technology and Resources Unit.

24. Other pledges that are on schedule are our pledges -

- to conduct mock trials in the Mainland;
- to provide training in the Common Law for Chinese government lawyers of the Mainland;
- to continue to promote HKSAR's participation in international law fora;
- to identify areas in which HKSAR may benefit from international co-operation and pursue appropriate arrangements; and
- to promote public knowledge of the legal system.

25. The two targets that are under review are :

- to review existing legislation to identify outdated and unclear provisions in existing legislation; and

- to complete the drafting of adaptation bills in respect of all the 640 ordinances.

26. We are behind schedule on only one pledge, which is to obtain the necessary authorisation from the Central People's Government and negotiate agreements on reciprocal enforcement of judgments with other jurisdictions. However, I am optimistic that progress will soon be made in respect of the reciprocal enforcement of judgments.

### **Looking Ahead**

27. In the next 12 months, we will continue to press ahead with our work in all six Key Result Areas.

### **New Initiatives**

28. In addition, we will implement 16 new initiatives.

29. In relation to the work of the Legal Policy Division, we will:

- develop expertise in respect of the new constitutional order, including Basic Law litigation;
- develop expertise in respect of legislative powers, procedures and practices under the Basic Law;
- develop general awareness of Basic Law issues by preparing Information Notes on many aspects of the Basic Law;
- take forward the pilot training scheme for Mainland lawyers on Hong Kong's laws and legal system; and
- present further reports under international conventions and covenants.

30. In relation to the work of the Law Drafting Division, we will conduct a pilot exercise to re-draft existing legislation in plain, user-friendly legal language.

31. In relation to the work of the Civil Division, we will develop a specialized team for inquiries into market misconduct following the de-mutualisation of the Stock Exchange and the Futures Exchange.

32. In relation to the work of the Prosecutions Division, we will:

- develop a specialised team for prosecution of computer crimes; and
- develop prosecution expertise in the areas of fraud and corruption.

33. In relation to the work of the Administration and Development Division, we will:

- implement more vigorous publicity efforts to foster understanding of the rule of law; and
- formulate proposals for the further development of a bilingual legal system.

### **Legal Adviser on Legislative Affairs**

34. One further development that I wish to mention is our appointment of a specialist consultant to advise on legislative affairs. I have already referred earlier to our



commitment to develop expertise in respect of legislative powers, procedures and practices, and this appointment is in furtherance of that initiative. I think Honourable Members will agree that the development of sound legislative practices and procedures within the constitutional principles of the Basic Law is a matter of fundamental importance. The appointment of a former Legislative Council Legal Adviser (Jonathan Daw) to advise on these matters will, I hope, contribute to the common purpose of Government and the Legislature in developing parliamentary practices appropriate to Hong Kong's unique constitutional status.

35. By parliamentary practices I mean the rules and established procedures which reflect and support the constitutional working relationship between the executive authorities and the legislature. For example the rules relating to the introduction of bills and motions for amendment to bills, motions on financial business, and the procedures for scrutinising subsidiary legislation. Our consultant's role in these areas is to offer impartial, objective advice in the best interests of the community.

36. Honourable Members, I hope that the appointment of Mr Daw will show the Government's genuine desire to better perform our work relating to legislative affairs, and our determination to work closely with, and secure greater support from, the Legislature.

### **Legal profession**

37. Madam Chairman, before I conclude, I wish to say a few words about the difficulties that the legal profession has encountered during the last year or so. The economic downturn has hit the profession badly, and morale is low in many quarters. I cannot offer any quick fixes, but I do wish to maintain a continuing dialogue with the two professional bodies. Any suggestions that they have for dealing with the situation will be given careful consideration. One of the concerns of the profession - the need for a review of legal education - is being actively considered by a Working Group, which has representatives from the professional bodies, the two law faculties and the Administration. I am hopeful that the first stage of the review can begin early next year.

### **Conclusion**

38. The Department of Justice is determined to play its part in realising the vision of "One Country, Two Systems" and the principle of "Hong Kong people ruling Hong Kong". We are fully committed to upholding the rule of law under the Basic Law, and are ready and eager to take on the challenges that lie ahead.

39. I am now happy to answer any questions that Honourable Members may wish to raise.

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## **Opening Statement of the Director of Administration at the Meeting of the Administration of Justice and Legal Services Panel of the Legislative Council to be held on 13 October 1999**

The 1999 Policy Objective of the Administration Wing is contained in the document "Administration Redress and Legal Aid". This document describes a package of measures in pursuit of the Administration Wing's Policy Objective of providing avenues for administrative redress and legal aid services as well as giving quality support to the Government Secretariat and maintaining an efficient protocol service.

2. In the past year, we have been working on 19 targets under a total of 15 initiatives that we have undertaken in 1998 and before. The areas covered include the provision of channels for administrative redress and legal aid services, maintaining effective communication between Government and the Legislature, provision of support to the Government Secretariat and to the management of government records, as well as the reception of VIPs and the administration of the consular corps' affairs. I am pleased to report to Members that we have completed 8 targets, 10 are proceeding on schedule, and another one (concerning the strengthening of the directorate of the Application and Processing Division of the Legal Aid Department (LAD)) is under review.

3. I shall briefly report on the progress that we have made in the past year and the direction that we will be heading in the coming twelve months regarding a few subject areas that will be of interest to this Panel.

### **Maintaining public confidence in independent redress**

4. It is our aim to continue to provide fair, open and accessible avenues for members of the public to lodge appeals and complaints against administrative decisions and measures. The main channels of lodging appeals include the Administrative Appeals Board and the Municipal Services Appeals Board, the Ombudsman, as well as the Visiting Justices of the Peace (JPs) under the JP System.

5. Recently, the efficiency in hearing appeals by the Administrative Appeals Board and the Municipal Services Appeals Boards has been enhanced with the appointment of a High Court Judge and a District Court Judge as additional Deputy/Vice Chairmen to the two Boards. In the coming year, we shall increase the number of sittings for the two Boards from a total of 3 sittings to 4 sittings each month so as to further reduce the time required for an appeal to be heard after it has been filed. Our target for the coming year is to ensure that an appeal to the Administrative Appeals Board or the Municipal Services Appeals Boards will be heard within an average of 4 and 3 months respectively after it has been filed.

6. As regards the Ombudsman as a channel of redress, we have extended the jurisdiction of the Ombudsman earlier this year to cover four additional statutory bodies, namely, the Employees Retraining Board, the Hong Kong Examination Authority, the Hong Kong Sports Development Board and the Mandatory Provident Fund Schemes Authority. The Ombudsman now has jurisdiction over practically all Government departments and 18 statutory bodies, and we shall continue to keep under review the possibility of further extending her jurisdiction to other major statutory bodies.

7. The Visiting JP System is an important channel for redress for inmates of various institutions (e.g. penal institutions). Earlier this year, we have completed a review of the JP system and formulated a number of improvement proposals. In the coming year, we shall be implementing the various proposals to improve the Visiting JP System, which include, inter alia, allowing JPs to visit particular institutions of their choice on a

more regular basis, to provide JPs with more up-to-date information on the institutions before their visit, to allow more time for JPs to submit their comments regarding their visits, and to start publishing annual reports on JP visits to various institutions. With such improvements, we shall hope to make our Visiting JP System more efficient, effective and transparent.

### **Provide efficient legal aid services**

8. Closely linked to the provision of avenues for redress is the provision of legal aid services. Our objective in this area is to ensure that no one with reasonable grounds for pursuing a legal action is prevented from seeking justice because of lack of means. In the year, we completed the Legal Aid Policy Review. A total of 17 recommendations, which seek both to expand the scope of the legal aid schemes and to improve existing services, are being progressively implemented through administrative and legislative means. We shall provide a series of new service, such as provision of legal assistance to the next of kin of the deceased for cases of significant public concern and for "properly interested persons" in coroner's inquests, upon the enactment of the Legal Aid (Amendment) Bill 1999, which will be introduced into the Legislative Council (LegCo) this afternoon. The recommendations of the Policy Review will also allow 58% of the total number of households (i.e. over 1 million families) in Hong Kong to become financially eligible for legal aid, up from 48% (i.e. about 0.8 million families) under the existing arrangement.

9. Throughout the years, we have striven to strengthen legal aid services both through increase in financial commitment and expansion of service. Our effort is evident from the six-fold increase in legal aid expenditure in terms of litigation cost over the last 10 years. Actual expenditure in terms of litigation cost for legal aid cases has increased from \$81 million in 1988/89 to \$518 million in 1998/99. LAD's estimated expenditure on litigation cost for 1999/2000 is \$669 million. Today's legal aid system has grown to one which covers all criminal cases and a wide range of civil cases including matrimonial disputes, personal injuries claims, employment disputes, contractual disputes, to name but a few.

10. In our consideration of the Legal Aid Services Council (LASC)'s recommendation on the establishment of an independent legal aid authority, we also focused our attention on the need to bring real benefits to users of the legal aid scheme. We note from the report prepared by the consultants commissioned by LASC and our own research that while a number of common law jurisdictions (such as Australia, Canada, New Zealand and the UK) have in place an independent legal aid authority, they are invariably faced with the pressure to contain costs and reduce service. They are in fact moving towards a more restrictive legal aid system at different pace. We also note that all the jurisdictions (i.e. Australia, Canada, and New Zealand) have a finite legal aid budget, and are only able to meet an ever-increasing demand for legal aid through imposing ceilings for expenditure on individual cases, or reduction of commitment through narrowing the scope of service. Even England and Wales, which originally have in place an independent authority with unlimited budget, have enacted legislation in July this year to cap the funds provided for legal aid in the light of rapid growth of cost.

11. Such overseas experience suggests that it is the interest of potential legal aid recipients that might be jeopardised if a fixed budget system were to be introduced. On the other hand, if we were to agree to the disestablishment of the Legal Aid Department (LAD) and the establishment of an independent legal aid authority with an infinite budget, we would be faced with a series of questions involving accountabilities, such as the means to ensure effective use of resources and efficient operations of the authority, all of which are difficult to resolve. Indeed, none of the overseas jurisdictions examined have been able to tackle the problems brought about by an

independent legal aid authority which has no funding cap. It should also be noted that according to the consultants commissioned by LASC, the majority of the community groups consulted believe that legal aid is administered independently in Hong Kong. There was greater concern over the quality of service provided. Legal practitioners consulted by the LASC's consultants also consider that legal aid is administered independently in most cases, although some believe that in certain sensitive cases affecting the Government there is insufficient transparency, or that it is not seen to be independent. The consultants also recognised that there are safeguards in the current system to protect the independence of legal aid administration. Such safeguards include, for example, a statutory requirement for the Director of Legal Aid (DLA) to consider all cases independently, and a mechanism whereby persons whose application for legal aid is rejected by DLA can appeal to the Judiciary (Registrar, High Court). It should also be noted that 75% of legal aid cases are assigned to lawyers in private practice.

12. Taking into account overseas experience, as well as the Government's long-established principle of prudence management of public money, and the possible unsettling effect that could have on the staff of LAD, our conclusion is that the present legal aid system with an open-ended budget is best placed to achieve our policy objective. We will continue to ensure a high degree of public satisfaction in respect of legal aid services, and conduct regular reviews on legal aid services to look for ways to better achieve this objective. In the coming year, the LAD will launch a new performance pledge on payments related to legal aid cases. Implementation of the Information Systems Strategy, which will bring about speedier processing of applications and payments, and better case management, will begin. This will bring about savings because of improved efficiency and elimination of duplicated work process. We continue to look to Members for support in our effort to better administer the legal aid schemes.

### **Maintain effective communication between Government and the Legislature**

13. Another important aspect of the work of the Administration Wing is the maintenance of effective communication between the Government and the Legislature. The Administration fully appreciates the need to work closely with the legislature to enable it to carry out its business efficiently and effectively for the benefit of the community at large. In the past legislative session, we worked closely with LegCo on various fronts on a day to day basis. For instance, we put forward over 120 government bills, 320 pieces of subsidiary legislation and 79 financial proposals for LegCo to scrutinize and approve in the last session. We answered a total of over 2 000 oral, supplementary or written questions raised by Members at Council meetings. Government officials also attended more than 290 panel meetings to explain government policies and proposals to LegCo Members in the past session. In the current legislative session, the legislative workload would continue to be heavy as we envisage some 50 government bills would be introduced as indicated in the legislative programme we passed to Members earlier. We would no doubt continue to work closely with LegCo to ensure that the bills are properly scrutinized before they are passed.

14. To ensure that effective communication between the Administration and the Legislature is maintained, we will continue to arrange meetings between the Chief Secretary for Administration and the Chairman of the LegCo House Committee so that matters of concern to LegCo can be discussed promptly. We will also remind policy bureaux to explain policies and legislative/financial proposals and seek the views of LegCo Members as early as possible before such policies and proposals are finalized. In the coming year, we have set a target of providing supplementary answers to oral questions raised by LegCo Members within three weeks. We also aim to submit progress reports on motion debates carried by LegCo within two months.

15. On the issue of LegCo Rules of Procedure, the Administration and Members have had a number of meetings to exchange views. On this issue, there are differences of opinion between the Administration and LegCo as to how the relevant articles of the Basic Law should apply. We appreciate this is an issue of concern. We hope to keep a dialogue with LegCo with a view to resolving these difficult constitutional issues.

16. On LegCo's accommodation need, we note the LegCo's long term accommodation need for all the legislative facilities to be placed under one roof. We are now looking into possibilities to meet LegCo's wish to have a purpose-built Legislative Council Building and would discuss with LegCo on the best way forward.

### **Ensure efficient administration of the Consular Corps' affairs and reception of VIPs**

17. I do not intend to go into details regarding the work of the Protocol Division of my office in the reception of VIPs and the administration of the consular corps' affairs. However, may I just mention in passing that since the handover, we have been working on two Bills concerning the privileges and immunities of international organizations and the consular corps. One of the two Bills has already been introduced into this Council for its consideration, while we are working on the other one. We hope that these two bills can be passed in this legislative session. At present, we have in Hong Kong a strong presence of foreign representation, with some 96 consular posts, which helps to give us our international flavour. We expect a few more additions in the coming year.

### **Conclusion**

18. As Members will appreciate, the Administration Wing is responsible for a vast variety of policy areas. To help us continue to strive for improvements, I welcome the views and comments from Members of this Council regarding the areas of work falling within the purview of the Administration Wing.