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Legislative Council

LC Paper No. CB(2)1956/99-00
(These minutes have been seen by the Administration)

Ref : CB2/PL/AJLS

Legislative Council
Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Tuesday, 18 April 2000 at 4:30 pm
in Conference Room A of the Legislative Council Building

Members Present	:	Hon Margaret NG (Chairman) Hon Albert HO Chun-yan Hon Martin LEE Chu-ming, SC, JP Hon Mrs Miriam LAU Kin-yee, JP
Members Absent	:	Hon Jasper TSANG Yok-sing, JP (Deputy Chairman) Hon Emily LAU Wai-hing, JP Hon James TO Kun-sun Hon Mr Ambrose LAU Hon-chuen, JP
Public Officers Attending	:	*Item IV* Mr R C ALLCOCK, BBS Solicitor General (Acting) Mrs Pamela TAN, JP Director of Administration & Development Mr Peter WONG Senior Assistant Solicitor General *Item V* Mr R C ALLCOCK, BBS Solicitor General (Acting)

Mr Michael R SCOTT
Senior Assistant Solicitor General

Ms Rosanna LAW
Assistant Director of Administration

Ms Emma LAU
Deputy Judiciary Administrator (Development)

Item VI

Mr R C ALLCOCK, BBS
Solicitor General (Acting)

Mrs Pamela TAN, JP
Director of Administration & Development

Mr Peter CHEUNG, JP
Deputy Director (Administration)

Attendance by Invitation : *Item IV*

The Hong Kong Bar Association

Prof Johannes CHAN

Mr Hector PUN

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

Staff in Attendance : Mr Jimmy MA, JP
Legal Adviser

Miss Mary SO
Senior Assistant Secretary (2)8

Action Column

I. Confirmation of minutes of meeting
(LC Paper No. CB(2) 1699/99-00)

Action
Column

The minutes of meeting on 15 February 2000 were confirmed.

II. Information papers issued since last meeting

(LC Paper Nos. CB(2)1431/99-00(01) and 1531/99-00(01) - Correspondence between the Chairman and the Administration on "Section 2GG of the Arbitration Ordinance")

(LC Paper Nos. CB(2)1495/99-00(01) and 1687/99-00(01) - Correspondence between the Chairman and the Chairman, University Grants Committee on "Funding for the PCLL course")

2. Members noted the above papers.

III. Items for discussion at the next meeting

(LC Paper Nos. CB(2)1698/99-00(01) and (02))

3. Members noted the list of outstanding items to be considered ((LC Paper No. CB(2)1698/99-00(01)) and an agenda item on "marital rape" proposed by the Chairman ((LC Paper No. CB(2)1698/99-00(02)). They agreed that the following items would be discussed at the next meeting to be held on 16 May 2000 -

(a) Marital rape under section 118 of the Crimes Ordinance (Cap. 200); and

(b) Review of the applicability of Personal Data (Privacy) Ordinance to "State" organs stationed in the HKSAR.

4. In regard to item 3(a) above, the Chairman suggested and members agreed that the Panel on Security be invited to join the discussion of the item.

5. On the outstanding item concerning enforcement of arbitral awards between Hong Kong and Macau, Mrs Miriam LAU suggested that the Administration be asked to provide a paper on the development of the matter. Members agreed.

IV. Rule of law and related matters

(LC Paper Nos. CB(2)2526/98-99(02), 1698/99-00(03) and 1721/99-00(01))

6. Members noted the two papers provided by the Administration entitled "Ensuring that the HKSARG abides by the law and implement laws already in force"(LC Paper No. CB(2)2526/98-99(02)) and "Measures to promote the rule of law and judicial independence, and to enhance confidence in Hong Kong's legal system"(LC Paper No. CB(2)1698/99-00(03)).

Action Column

7. At the invitation of the Chairman, Prof Johannes CHAN presented the submission of the Hong Kong Bar Association on the rule of law (LC Paper No. CB(2) 1721/99-00(01)). In essence, Prof CHAN said that several incidents occurred since Reunification had given rise to concern that the rule of law was being eroded, e.g. the Government's decision to seek the interpretation of the Standing Committee of the National People's Congress (NPCSC) on Articles 22(4) and 24(2)(3) of the Basic Law to overturn the judgment of the Court of Final Appeal (CFA) on cases involving the right of abode issues, the Secretary for Justice (SJ)'s decision not to prosecute the head of a public corporation even though her subordinates were charged with conspiring with her to defraud others and the Government's refusal to appoint a commencement date to bring into operation the Interception of Communications Ordinance 1997 and the Crimes (Amendment)(No.2) Ordinance 1997 passed by the Legislative Council (LegCo) prior to the Reunification simply because the Government opposed the legislation in the first place. The Bar Association urged the Government to re-affirm its commitment to the rule of law, and as part of that commitment, not to refer any question to the NPCSC except through the judicial referral set out in Article 158(3) of the Basic Law, and to take all necessary steps to strengthen the rule of law in the community, such as incorporating general legal education in the school curriculum and providing more legal training to the civil servants. In respect of the latter, Prof CHAN said that more legal training should be provided to public servants serving on disciplinary tribunals. To his knowledge, a lot of them had no idea what rule of law meant and thus had conducted cases in such a manner that attracted unnecessary number of applications for judicial review.

"Misconceptions" versus "True position"

8. Mr Albert HO referred members to paragraph 6(1)-(7) of the Administration's paper (LC Paper No. CB(2)1698/99-00(03)) which set out the "misconceptions" and "true position" of issues involved in the NPCSC interpretation on Articles 22(4) and 24(2)(3) of the Basic Law. He said that the "true position" given by the Administration to correct the "misconceptions" still failed to alleviate the worries of the public and the legal profession about the legal and constitutional implications of the NPCSC interpretation. He quoted two examples. The true position in paragraph 6(1) stated that "the NPCSC can only interpret the Basic Law, and other national laws that apply to Hong Kong, but cannot interpret local legislation". He said that this was contrary to common understanding that the NPCSC could not interpret those provisions of the Basic Law which were within the limits of Hong Kong's autonomy. The true position in paragraph 6(2) stated that "an NPCSC interpretation does not undo a court decision in favour of a particular party to the proceedings". Mr HO said that this was misleading if it implied that people who would have benefited as a result of the CFA judgments on 29 January 1999 would not be affected by the interpretation given by the NPCSC on Articles 22(4) and 24(2)(3) on 26 June 1999. The reality was that those right of abode claimants who were not litigants in the two test cases ruled by the CFA on 29 January 1999 might be adversely affected by the NPCSC interpretation.

Action Column

9. Mrs Miriam LAU said that although the Liberal Party was in support of the Government's decision to seek the NPCSC interpretation, in view of the many concerns expressed on the matter, she suggested that the Administration should take a fresh look at these concerns to see if it could come up with new clarifications. Referring to the "true position" in paragraph 6(1) of the Administration's paper, Mrs LAU said that although the NPCSC could only interpret the Basic Law but not local legislation, the NPCSC's interpretation on the Basic Law could have a direct effect on local legislation. This was because the provisions of the Basic Law could be the basis upon which local legislation was drafted. Given that Hong Kong should have autonomy on local matters, her concern was where the line should be drawn.

10. Mr Martin LEE disputed the Administration's position that the NPCSC could not interpret local legislation. He pointed out that if an interpretation of the Basic Law was to be sought from the NPCSC, it was likely the case that certain provisions of local legislation were considered to be inconsistent with the Basic Law. In order to come to a view, the NPCSC would have to look at the relevant provisions of both the Basic Law and the local legislation under challenge.

11. Solicitor General (Acting) (SG(Ag)) accepted that an NPCSC interpretation on the Basic Law could have implications on local legislation. The NPCSC interpretation on Articles 22(4) and 24(2)(3) of the Basic Law did result in amendments to the Immigration Ordinance (Cap.115). Nevertheless, it was different from interpreting local legislation. SG(Ag) further said that the NPCSC had confined its interpretation to relevant provisions of the Basic Law on that occasion and had made no attempt whatsoever to interpret local legislation. He remained of the view that the NPCSC could not interpret local legislation.

Assurance as to the future

12. Mr Albert HO said that the concerns over the right of abode issues could not be fully addressed unless the Government would give an assurance that it would not again seek an interpretation from the NPCSC. Mr Martin LEE said that enough damage had been done to the rule of law and judicial autonomy by the single act on the part of the Chief Executive (CE) to ask the NPCSC to give an interpretation of the two Articles of the Basic Law. To restore confidence in Hong Kong's legal system, he was adamant that the Government should give the assurance.

13. Prof Johannes CHAN said that since the Basic Law had set out a clear procedure and the circumstances for referring a question to the NPCSC for interpretation under Article 158(3), it must mean that there was no other way for referral to the NPCSC except by a judicial referral through the CFA. Prof CHAN pointed out that as Article 158(3) was designed to achieve a separation of the two systems by granting the power of final adjudication to the courts of Hong Kong, the Government's action to seek an interpretation from the NPCSC on the Basic Law in

Action
Column

the right of abode cases was therefore at variance with the concept of "one country, two systems" and constitutionally unacceptable. Prof CHAN further said that what the Administration had done in the right of abode cases was to seek an interpretation which had the effect of an amendment, there by defeating the purpose of the amendment procedure provided under Article 159 of the Basic Law.

14. Mr Martin LEE echoed Prof CHAN's views. He further said that if the NPCSC could interpret any provisions of the Basic Law, there would be no need for having paragraphs 2 and 3 of Article 158 in the Basic Law. Mr LEE also expressed regret about the advice given by SJ and her colleagues that anyone in Hong Kong could seek an interpretation from the NPCSC on the Basic Law either before, during or after the trial. He said that as the NPCSC would more likely to accede to a request from the Government than from ordinary Hong Kong people, this unfair treatment would make the whole situation even worse.

15. The Chairman requested the Administration to respond to the proposal of the Bar Association that the Government should in future only refer any question to the NPCSC for interpretation through the judicial referral process set out in Article 158(3) of the Basic Law.

Adm

16. On the comments made by members and Prof Johannes CHAN, SG(Ag) said that the Administration did not agree that the request for an interpretation of the two Articles in the Law Basic had undermined confidence in the rule of law and judicial autonomy. Moreover, he was not in a position to give an assurance that the Administration would never seek an interpretation from the NPCSC on the Basic Law. The Administration had indicated on numerous occasions that it would only seek NPCSC interpretation in highly exceptional circumstances. SG(Ag) assured members that the NPCSC would not accede to a request for interpretation lightly, as evidenced by the fact that it had all along exercised great self-restraint in using its interpretation power. SG(Ag) added that the Administration was currently considering the views expressed by members and deputations during the meetings of the Panel on Constitutional Affairs held in June 1999 on the guidelines and criteria for seeking an interpretation from the NPCSC. A paper detailing the Administration's response to such views would be submitted for the Panel's consideration in due course.

Adm

Legality of the Government's decision

17. The Chairman said that apart from an assurance as to the future, another issue which might be pursued was whether the Government had acted unlawfully by seeking an interpretation from the NPCSC in the right of abode issues in May 1999. She invited the Administration to respond to the views expressed by some academics that the request by CE for the NPCSC interpretation was unconstitutional and unlawful.

Action Column

18. SG(Ag) responded that the Administration was firmly of the view that seeking the NPCSC interpretation was lawful and constitutional. SG(Ag) pointed out that no adverse comments on the request for NPCSC interpretation were made by the CFA in delivering its judgment on the LAU Kong-yung case in December 1999. Indeed the CFA judgment stated that the NPCSC interpretation was lawful and binding on the courts. SG(Ag) added that if people felt that the Administration had acted unlawfully in seeking an interpretation from the NPCSC, they could seek a remedy from the courts. However, no one had done so to date.

19. On the legality of a reference to the NPCSC by the Government, Prof Johannes CHAN said that this was not the appropriate forum for discussing the matter. The Administration might wish to reconsider the matter in the light of the views expressed by many legal professionals and academics, especially a recent article written by learned academics in Cambridge who were of the view that it was unlawful for the Government to seek the NPCSC interpretation.

(Post-meeting note : The article entitled "The Rule of law in Hong Kong: the Court of Final Appeal, the Standing Committee of the National People's Congress and the powers, under the Basic Law, of the Government of the Hong Kong Special Administrative Region" was written by Mark Elliott and Christopher Forsyth)

Promoting awareness of the rule of law

20. The Chairman requested the Administration to give a response to the Bar Association's suggestion to introduce legal education in the school curriculum as well as to strengthen legal training for civil servants, in order to restore public respect and confidence for the rule of law.

21. SG(Ag) said that the Administration attached great importance to improving civil servants' knowledge of the Basic Law and administrative law. On the question of incorporating general legal education in the school curriculum, SG(Ag) suggested that the matter be referred to the Secretary for Education and Manpower for consideration. The Chairman said that in the interest of tidy management of affairs, it would be preferable for SG(Ag) to follow up with the relevant Bureaux and to revert to the Panel on the Administration's position in due course. SG(Ag) agreed.

Adm

Conclusion

22. In view of SG(Ag)'s earlier response, Mr Albert HO suggested and members agreed that the Chairman should on behalf of the Panel write a letter to SJ requesting for an explanation as to why the Administration still refused to give an assurance that it would not again seek an interpretation from the NPCSC.

23. The Chairman said that a draft letter setting out members' views expressed at the meeting would be circulated to members for consideration. Subject to members'

Action
Column

agreement, the letter would be issued to SJ for a response.

(Post-meeting note : The letter was sent on 5 May 2000)

V. "Leapfrog" appeals to the Court of Final Appeal
(LC Paper No. CB(2)1969/98-99(05) - Submission dated 7 May 1999 from the Law Society of Hong Kong (issued for the meeting on 15 June 1999)
(LC Paper No. CB(2)1698/99-00(04))

24. The Chairman said that during the passage of the Court of Final Appeal Ordinance (Cap. 484) in 1995, the proposal of introducing a leapfrog procedure by which civil appeals could, in certain cases, bypass the Court of Appeal and go direct to the CFA was proposed by the Bar Association. The Administration did not agree with the Bar Association's proposal. Its preference was to allow the CFA to operate, at least initially, according to the system which prevailed in respect of the Privy Council. The Administration agreed, however, that the possibility of introducing a leapfrog procedure could be revisited after the CFA had been established for a number of years and its reputation established. At the Panel meeting on 15 June 1999, the Administration agreed to review the proposal and had now prepared a paper which set out its provisional views for members' consideration.

25. Referring to the paragraph 33 of the Administration's paper which detailed the leapfrog procedure proposed by the Administration, SG(Ag) said that the Administration's proposal was similar to that proposed by the Bar Association and the Law Society, which in effect broadly followed the United Kingdom (UK)'s leapfrog procedure under sections 12 and 13 of the Administration of Justice Act 1969. SG(Ag) however proposed that questions of the interpretation of the Basic Law would be excluded from the leapfrog procedure, except where the Court of Appeal was bound either by its own decision or a decision of the CFA. SG(Ag) further said that in coming up with the leapfrog procedure proposal, research had been undertaken to see if other jurisdictions, i.e. Australia, Malaysia, New Zealand, Singapore, South Africa and Canada, had comparable leapfrog procedures. The findings showed that although Canada was the only other jurisdiction having a formal leapfrog procedure, its procedure was rather widely drafted and infrequently used. As such, the Administration concluded that the Canadian leapfrog procedure was not a good model and had therefore chosen the tighter approach of the UK system.

26. In reply to the Chairman's enquiry about the advantages and disadvantages of a leapfrog procedure, SG(Ag) referred members to paragraphs 8 and 9 of the paper which set out the detailed arguments for and against a leapfrog procedure. In essence, SG(Ag) said that the advantages were that the parties were spared the need of first appealing to the Court of Appeal by going straight to the CFA thereby saving time and costs. On the other side, there were concerns that the CFA should not be deprived of the expository judgments of the Court of Appeal. Also, it was in practice

Action
Column

not easy to identify at first instance the cases which were suitable to go straight to the CFA or the points which required to be argued there. As such, the approach that was adopted in the UK was only to allow leapfrogging in restricted circumstances, namely, it should firstly be a civil case, and secondly the issue either had to be related to a matter of statutory interpretation which by definition involved a very confined issue or to a point of law which had been the subject of a previous decision of the Court of Appeal or the House of Lords.

27. The Chairman further asked whether the Administration had sought the views of the Judiciary on the leapfrog procedure. SG(Ag) replied that the Judiciary had no objection to the introduction of a leapfrog procedure with the same requirements as applied in the UK, adapted as appropriate to Hong Kong, including the requirements that leave be obtained from the Appeal Committee of the CFA. The procedure would not apply to District Court cases or other cases where appeals went to the Court of Appeal. SG(Ag) however pointed out that the Judiciary had expressed the view that questions concerning the interpretation of the Basic Law should be excluded from the leapfrog procedure for the time being, given that the Basic Law was the constitution under the new order and the jurisprudence had to be developed.

28. Deputy Judiciary Administrator (Development) (DJA(D)) said that the Judiciary was generally agreeable to the proposed leapfrog procedure, save for a minor modification to paragraph 33(6) of the paper by replacing the word "will" in "which will determine without a hearing" with "may" so as not to restrict the discretion of the Appeal Committee of the CFA as to whether a hearing should be ordered or not. DJA(D) said that the Administration was agreeable to this amendment proposed by the Judiciary.

29. The Chairman agreed that a point of law relating to the Basic Law might only leapfrog if, in respect of it, the trial judge was bound by a decision of the Court of Appeal or the CFA and it had been fully considered in the judgments given by the Court of Appeal or the CFA. She however pointed out that the LAU Kong-yung case was heard by the CFA without first being considered by the Court of Appeal. SG(Ag) expressed the view that this case was not concerned with leapfrogging, since the Court of Appeal had heard the case before it went to the CFA.

30. Mr Martin LEE expressed support for the proposed leapfrog procedure as set out in paragraph 33 of the Administration's paper to avoid abuse of the system. He however was of the view that where a quick resolution was needed to restore public order, such as a strike, consideration could be given to allowing the case to go straight to the CFA for a ruling if all parties to the proceedings agreed to leapfrog.

31. Mr LEE further said that if at the outset the cases which were suitable to go to the CFA and the points which were required to be argued there could be identified, the judges who would preside at the trial should be told of such situation at the pre-trial review stage. Mr LEE pointed out that there were two advantages for doing so.

Action
Column

Apart from the fact that the judges would not decide the cases on another point of law, the counsels would be encouraged to have full arguments in the proceedings thereby satisfying one of the conditions for a leapfrog appeal to the CFA as set out in the first half of paragraph 33(3) of the Administration's paper which stated that the point of law must have been fully argued in the proceedings and fully considered in the judgment of the trial judge in the proceedings.

32. SG(Ag) agreed to consider Mr LEE's suggestions. He further said that prior to the introduction of the leapfrog procedure, the Administration would consult the Bar Association, the Law Society and the Panel on the implementational details of the leapfrog procedure.

33. Mrs Miriam LAU said that the suggestion made by Mr Martin LEE in paragraph 30 above warranted consultation with the Bar Association and the Law Society, as it would invariably impose an obligation on counsel to decide at the very beginning whether a case was suitable to go to the CFA and the points of law to be argued. The Chairman echoed Mrs LAU's view, and further expressed reservation about the desirability of encouraging this kind of decision at so early a stage. Moreover, any sensible judge, having heard the views of counsel at the pre-trial review stage, would most likely adopt a wait and see attitude.

34. Noting that the leapfrog procedure would be introduced by way of amending the CFA Ordinance, the Chairman asked about the legislative timetable. Assistant Director of Administration replied that it was the Administration's aim to introduce the amendments into LegCo in the next legislative session.

35. Mrs Miriam LAU enquired of the circumstances under which the Appeal Committee of the CFA would grant an application for leave to leapfrog, and the position of the parties concerned if the application for leave to leapfrog was turned down by the Appeal Committee of the CFA.

36. SG(Ag) replied that if an application for leave to leapfrog was refused by the Appeal Committee of the CFA, the appeal case concerned would be heard by the Court of Appeal in the ordinary way. As regards the basis for determining whether an application for leave to leapfrog should be granted, SG(Ag) said that the fundamental questions which the CFA would most likely ask when considering an application were whether justice would be done to the parties and to the point of law, and whether the CFA would be assisted if the appeal case were to go to the Court of Appeal first.

37. In summing up, the Chairman hoped that the leapfrog procedure would only be used in those rare suitable cases to cut out unnecessary tedium and expense where a point in issue had been fully argued and fully considered in the judgment appealed from or where the point in issue had been the subject of previous decision of the Court of Appeal, and not to be used for the purpose of expediency or as a quick way of

Action
Column

dealing with a crisis situation, such as that suggested by Mr Martin LEE in paragraph 30 above.

VI. Staffing proposal on the creation of a consultancy position and re-deployment of a Principal Government Counsel post in the Department of Justice

(LC Paper No. CB(2)1698/99-00(05))

38. At the invitation of the Chairman, SG(Ag) introduced the Administration's paper which explained the justifications for the creation of a consultancy position at DL4 level in SJ's Office (SJO)for a period of two years from 7 September 2000 to 6 September 2002 and the redeployment of a permanent post of Principal Government Counsel (PGC) at DL3 level from SJO to the Legal Policy Division (LPD) with effect from 9 June 2000. SG(Ag) said that both proposals were necessitated by the increase in workload brought about by the Basic Law after Reunification. On the first proposal, SG(Ag) said that it sought to extend the employment of the consultant whose main duties were to provide legal expert advice to SJ on matters relating to the LegCo. SG(Ag) pointed out that following review, the Administration considered it necessary to retain the services of the consultant for another two years. SG(Ag) added that the proposal also sought to upgrade the consultancy position from DL3 to DL4 level, on the ground that the consultant was working at a very senior level in terms of responsibility and advising people at Bureau Secretary level on issues of fundamental importance. Furthermore, in many respects the breath and depth of the consultant's duties mirrored those of the Legal Adviser of LegCo, which was pitched at DL5 level.

39. SG(Ag) further said that upon successful creation of the consultancy position mentioned in paragraph 38 above, the existing PGC/SJO post would be redeployed to the LPD. To this end, one permanent PGC post in the LPD would be created to fill the supernumerary post of Deputy Solicitor General (Constitutional) (DSG(C)) which would lapse on 1 April 2001. SG(Ag) pointed out that the major task of the supernumerary post of DSG(C) when first established was the legal input into the preparation and passage of the electoral laws required under the Basic Law for the elections to LegCo and the establishment of the legal infrastructure for the regular cycle of elections. However, the volume, complexity and importance of constitutional advice needed as a result of Reunification warranted the creation of a permanent DSG(C) post to oversee the constitutional side of the LPD which included matters relating to the Basic Law, human rights and elections. SG(Ag) added that the creation of a permanent PGC post in the LPD would be cost neutral, as such post would be offset by the deletion of a PGC post in SJO.

40. Referring to paragraph 4 of the Administration's paper which mentioned that part of the duties of consultant was to provide legal advice regarding the accountability of the executive authorities to LegCo, Mr Martin LEE said that he

Action
Column

could not see any improvement had been made in this regard. He remarked that any effort to bring about accountability of the executive authorities to the legislature would be futile, if both CE and LegCo were not democratically elected. Mr LEE also expressed great reservation in providing the Department of Justice (D of J) with more resources to deal with legal issues arising from and in connection with the Basic Law through the creation of the DSG(C) post in the LPD, given SJ's track records of applying the Basic Law in a manner which had resulted in the rule of law being undermined.

41. SG(Ag) responded that the job of the consultant was to do his best to smooth the relationship between the executive authorities and the legislature under the Basic Law as it now stood. SG(Ag) further said that although not all of the work of the consultant had borne fruit, substantial progress had been made on major issues affecting the legislative process, the legislature's position under the Basic Law and the working relationship between the executive and the legislature (e.g. Members' amendments to bills under Article 74 of the Basic Law, the interpretation of the term "budget" under Articles 50 and 51 of the Basic Law and of the term "important bill" under Article 50 of the Basic Law, mechanism for amending the Basic Law, the return of bills to LegCo for reconsideration under Article 49 of the Basic Law, and the designation of officials to attend LegCo meetings). SG(Ag) hoped that past events would not affect Members' decision to support the creation of a permanent DSG(C) post in the LPD, as the main task of the post was to ensure that the Government did abide by the Basic Law and, in particular, by its human rights provisions.

42. The Chairman questioned the justification for the consultancy position. In her views, SJ being the first law officer of the territory should be an expert on legislative and procedural matters involving LegCo, including implications of Basic Law provisions relevant to LegCo. The fact that a consultant had been engaged to provide advice to SJ on these matters would inevitably raise concern as to whether the consultant was doing the SJ's job and that the SJ's appointment was a political one. The Chairman also questioned the appropriateness of equating the job of the consultant with that of the Legal Adviser of LegCo, as the latter's job was to provide legal advice to Members the majority of whom were not lawyers. Noting that the consultant also gave advice to Bureaux on important procedural and practical matters involving LegCo, the Chairman asked why such work could not be undertaken by SJ direct.

43. SG(Ag) responded that no lawyers could do the work all by themselves, particular those in senior positions. In the case of SJ, she was assisted by the consultant whose duties were to undertake research, such as the legislative practices and experiences in other jurisdictions, and where necessary to tender advice to SJ. It was then up to SJ to decide whether or not to accept the consultant's advice. As such, there was no question of the consultant displacing SJ. Concerning the point that SJ should advise the policy secretaries direct on legislative matters, SG(Ag) said that SJ would do so when very important matters arose. However, for efficient division of

Action
Column

work, it would be more appropriate for the consultant to give advice to Bureaux on the more routine matters involving LegCo. On justifications for the consultancy position and for pitching its ranking at DL4 level, SG(Ag) explained that apart from giving advice to SJ and Bureaux, often at Secretary or Deputy Secretary level, on important procedural and practical matters relating to LegCo, the consultant was also expected to provide legal advice on the implications of Basic Law provisions relevant to LegCo, such as the mechanism for amending the Basic Law under Article 159 of the Basic Law and other major legislative issues. SG(Ag) added that although it was accepted that the Legal Adviser of LegCo advised Members who were not lawyers, the areas on which both the consultant in SJO and the LegCo's Legal Adviser would be giving advice were not dissimilar. For instance, where a Member wished to introduce a Member's bill, both would need to give advice as to whether the bill would be allowed for introduction under the Basic Law.

44. Mr Albert HO said that he had no strong view against the engagement of a consultant in the SJO, but queried whether the proposed upgrading of the rank of the consultant from DL3 to DL4 level was meant to be commensurate with the incumbent's experience and expertise rather than the scope of responsibilities of the post. Mr HO wondered whether the consultancy position would be downgraded when the incumbent resigned from the job.

45. SG(Ag) responded that there should be no question of downgrading the ranking of the consultancy position when the incumbent left his post, as the consultancy was a temporary arrangement to enhance expertise in legislative affairs during the formative period after Reunification. SG(Ag) reiterated that it was justified to pitch the consultancy position at DL4 level, as the work of the consultant involved providing high level advice to Bureaux on important procedural and practical matters relating to LegCo as well as coming up with pragmatic solutions to resolve some outstanding major legislative issues affecting the working relationship between the executive authorities and the legislature.

46. Mrs Miriam LAU said that she had no objection to the creation of a consultancy position pitched at DL4 level, provided that it was only for a finite period of time. Mrs LAU further urged the incumbent to expeditiously come up with solutions to address those important issues which had remained outstanding, particularly issues relating to Members' power to propose amendments to bills under Article 74 of the Basic Law.

47. The Chairman enquired about the difference between the permanent Deputy Principal Government Counsel (DPGC) post in the LPD considered by the Panel on 21 December 1999 and the present proposed permanent PGC post in the LPD. SG(Ag) replied that the DPGC post (at DL2) was created to head the Basic Law Unit of the LPD, and the post-holder in turn was supervised by the PGC. SG(Ag) further said that under the existing arrangement, the LPD was headed by the Solicitor General (at DL6) who was supported by three PGCs, in the posts of Deputy Solicitor General

Action
Column

(Advisory) (DSG)(A), DSG (Constitutional) (DSG(C)) and Secretary, Law Reform Commission respectively. Each of the two DSGs in turn supervised a number of units, namely the Human Rights, General Advisory and the China Law Units under DSG(A); and the Electoral Affairs Team, Basic Law and Administration Units under DSG(C).

48. In reply to Mr Albert HO's enquiry, Director of Administration and Development said that "DL" stood for "Directorate Legal" which was a grading specific to the professional officers of the D of J. She further said that SJ was the only post ranked at DL7 and that the salary of DL7 was higher than that of Directorate 8 level.

49. The Chairman concluded that members had expressed differing views on the two proposals. It would be a matter for the Establishment Subcommittee to decide whether or not to support these proposals.

50. There being no business, the meeting closed at 6:29 pm.

Legislative Council Secretariat
8 May 2000