

立法會
Legislative Council

LC Paper No. CB(2)245/04-05

Ref : CB2/PL/AJLS

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Tuesday, 9 November 2004 at 4:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon Margaret NG (Chairman)
Hon LI Kwok-ying, MH (Deputy Chairman)
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon MA Lik, JP
Hon KWONG Chi-kin
- Clerk in attendance** : Mrs Percy MA
Chief Council Secretary (2)3
- Staff in attendance** : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2
- Mr Paul WOO
Senior Council Secretary (2)3
- Mr Watson CHAN
Head, Research and Library Services Division
- Miss Kitty LAM
Research Officer 8

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(2)71/04-05 – Minutes of meeting on 12 October 2004)

The minutes of the meeting held on 12 October 2004 were confirmed.

II. Information papers issued since the last meeting

2. Members noted that the following papers had been issued –

- (a) LC Paper No. CB(2)53/04-05(01) – Letter dated 15 October 2004 from the Judiciary Administration on preparation of the Guide to Judicial Conduct;
- (b) LC Paper No. CB(2)58/04-05(01) and (02) – The Administration’s written responses to the submissions from the Legal Aid Services Council and the Law Society on review of provision of legal aid;
- (c) LC Paper No. CB(2)59/04-05(01) – Letter dated 30 August 2004 from the Law Society to the Administration on review of criminal legal aid fees, prosecution fees and duty lawyer fee; and
- (d) LC Paper No. CB(2)91/04-05 – Guide to Judicial Conduct published by the Judiciary in October 2004.

Guide to Judicial Conduct

3. Members agreed that clarification should be sought from the Judiciary Administration on the following matters –

- (a) whether the standards of conduct set out in the Guide applied equally to former/retired judges and judicial officers; and
- (b) the possible consequences of judges and judicial officers breaching the standards of conduct.

(Post-meeting note : The Judiciary Administration's written reply was issued to the Panel on 18 November 2004 vide LC Paper No. CB(2)239/04-05(01).)

III. Work plan of the Panel

(a) Outstanding items for discussion

(LC Paper No. CB(2)165/04-05(01) – List of outstanding items for discussion

LC Paper No. CB(2)165/04-05(02) – Tentative schedule setting out the items to be discussed at the Panel meetings in the 2004-05 session)

4. The Chairman informed members that she had held a meeting with the Administration on 3 November 2004 to discuss the work plan of the Panel. Pursuant to the discussion, the Clerk had revised the list of outstanding items and drawn up a tentative schedule setting out the items to be discussed at the Panel meetings in the 2004-05 session. The Chairman briefed members on the following items.

Action

Operation of the Legal Aid Services Council

(Item 2 on the outstanding list)

5. The Chairman informed members that the Administration had advised that the relevant legislative proposals to be introduced intended to enhance the operation of the Legal Aid Services Council would be included in the Statute Law (Miscellaneous Provisions) Bill 2005. The Bill would be introduced into the Council in March 2005 and the Administration had proposed to brief the Panel on the Bill at the Panel meeting on 14 December 2004.

6. Members agreed that this item should be removed from the outstanding list.

Issues relating to the imposition of criminal liability on the Government

(Item 9 on the outstanding list)

7. The Chairman informed members that at the meeting with the Administration on 3 November 2004, the Solicitor General had expressed the view that the item involved general Government policy issues which were not for the Department of Justice alone to decide. The Solicitor General had suggested that there should be a broader representation of the Administration to deal with the Working Group's recommendation.

8. On discussing the way forward, members agreed that the matter should be referred to the Chief Secretary for Administration's Office for follow-up. Members also agreed to request the Director of Administration to advise the Panel of the position of the Administration on the recommendation of the Working Group after consideration of the relevant issues, and propose a timing for the Administration and the Panel to discuss the matter.

(Post-meeting note : The Clerk had followed up the matter by writing to the Director of Administration on 12 November 2004.)

Clerk

9. Ms Emily LAU said that the report of the Working Group should be re-circulated to members when the timing for discussion was fixed.

Disclosure of information to the Legislative Council in the legislative process

(Item 12 on the outstanding list)

10. The Chairman said that this item concerned the refusal of the Administration to release relevant correspondence exchanged between the Central People's Government and the Hong Kong Special Administrative Region Government, on the ground that the documents were for internal use only and should not be released to persons outside the Administration. The Panel agreed the issue should be discussed in the context of disclosure of information to the Legislative Council in the legislative process.

Action

11. The Chairman further said that on 8 October 2004, the House Committee set up the Subcommittee to examine the implementation in Hong Kong of resolutions of the United Nations Security Council in relation to sanctions. She opined that as the Subcommittee would deal with the issues of concern previously raised by Members during scrutiny of resolutions made under the United Nations Sanctions Ordinance, the above item could be referred to the Subcommittee for appropriate follow-up action. Members agreed.

12. Members agreed that the item should be removed from the outstanding list.

(b) Items proposed by the Chairman

Appointment of "Special Advocates"

13. The Chairman informed members that in a recent High Court case, as a consequence of the order of non-disclosure made by Judge Hartmann, the applicant's counsel was unable to advocate the applicant's case with any knowledge of the material which had caused the applicant to be detained. Judge Hartmann decided to appoint a special advocate for the first time in Hong Kong.

14. The Chairman suggested to include this item in the outstanding list and that the Panel discuss the item with the Administration and the two legal professional bodies at the meeting in February 2005. Members agreed.

Limited liability for professional practices

15. The Chairman said that the Law Society was actively pursuing the implementation of limited liability partnership for solicitors in Hong Kong and had drafted a bill on the matter. She suggested that the item be included in the outstanding list for discussion by the Panel in due course. The Chairman also suggested that the Research and Library Services Division be requested to conduct a research study on the experience in selected overseas places in relation to limited liability for professional practices so as to facilitate discussion by the Panel. Members agreed.

16. Ms Miriam LAU said that as the question of limited liability partnership could not be dealt with in the Solicitor Corporations Rules as originally envisaged by the Law Society, the Law Society had to draft a bill to pursue the matter. While she had no objection to conducting the research study as proposed, she suggested that the Panel should first deal with the legislative proposal of the Law Society on limited liability partnership for legal practice. Having regard to the tentative work plan of the Panel, the Chairman proposed that the item be discussed by the Panel in March 2005.

Action

Solicitors' Rights of Audience

(LC Paper Nos. CB(2)165/04-05(03) and (04) – Letters dated 25 October 2004 and 2 November 2004 from Secretary to Working Party on Solicitors' Rights of Audience on progress of work of the Working Party)

17. The Chairman said that in response to a request by the Law Society, the Panel had written to the Law Reform Commission's Working Party on Solicitors' Rights of Audience to enquire about the progress of its work. The Working Party subsequently responded that a consultation paper would be available by the latter half of 2005 and it was premature at this stage to predict when it would complete its work and come up with final conclusions.

18. Members agreed that the item should be included in the outstanding list.

(c) Visit to the Judiciary

(LC Paper No. CB(2)165/04-05(05) – Visits to the Judiciary conducted by the Panel in the 2003-03 and 2003-04 sessions)

19. Due to shortage of time, the Chairman suggested and members agreed that the matter should be considered at the next meeting.

IV. Items for discussion at next meeting

(LC Paper No. CB(2)165/04-05(01) – List of outstanding items for discussion

LC Paper No. CB(2)165/04-05(02) – Tentative schedule setting out the items to be discussed at the Panel meetings in the 2004-05 session)

20. Members agreed that the following items should be discussed at the next regular meeting on 22 November 2004 –

- (a) Reciprocal enforcement of judgments in commercial matters between the HKSAR and the Mainland;
- (b) Professional Indemnity Scheme of the Law Society of Hong Kong; and
- (c) Solicitor Corporations Rules.

V. Any other business

Drafting counsel in the Department of Justice

21. Ms Audrey EU pointed out that recruitment exercises of drafting counsel in the Department of Justice had been suspended for several years. She was concerned that the situation could result in shortage of experienced drafting counsel, hence affecting the quality of law drafting and creating difficulties for the effective scrutiny of legislation by the Legislative Council.

Action

22. Members agreed that the Department of Justice should be requested to provide the following information for the consideration of the Panel –

- (a) present staffing position of the Law Drafting Division of the Department of Justice, including the number of drafting counsel, their years of service and experience in law drafting;
- (b) training on law drafting provided by the Department; and
- (c) measures taken to avoid a succession of gaps among drafting counsel in order to ensure the quality and efficiency in drafting of legislation.

(Post-meeting note : Clerk had followed up the matter by writing to the Department of Justice on 12 November 2004.)

23. The meeting ended at 5:05 pm.

Council Business Division 2
Legislative Council Secretariat
19 November 2004