

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion

(position as at 20 May 2005)

**Proposed
timing for
discussion**

1. Applicability of HKSAR laws to offices set up by Central People's Government in HKSAR

The item was discussed at a number of meetings of the Panel since 1998, and last discussed on 26 June 2001.

To be confirmed by the Administration

In response to the Panel's request for an update on the item and advice on the timing for reverting to the Panel, the Secretary for Constitutional Affairs advised on 26 November 2004 that the relevant policy bureaux and departments would introduce the legislative amendments in due course, having regard to competing legislative priorities. The Administration would consult the Legislative Council when concrete legislative proposals had been formulated (LC Paper No. CB(2)326/04-05(01) issued on 2 December 2004).

2. Review of provision of legal aid services

In October 2001, the Panel formed a Working Group to examine the relevant ordinances and subsidiary legislation concerning the provision of legal aid services in order to identify issues for the purpose of review and to make recommendations where appropriate. A list of issues for review (LC Paper No. CB(2)2646/01-02) was endorsed by the Panel and sent to the Director of Administration (D of Adm) for consideration on 1 August 2002.

At the meetings on 23 June, 29 July and 27 October 2003, D of Adm briefed the Panel on –

- (a) the proposed revisions of the financial eligibility limits for the Ordinary Legal Aid Scheme and the Supplementary Legal Aid Scheme as a result of the annual and biennial reviews conducted in 2002;
- (b) the outcome of the five-yearly review of the criteria used for assessing the financial eligibility of legal aid applicants; and

- (c) its response to the issues identified by the Panel for review by the Administration.

The Panel considered the written submissions from the Bar Association (LC Paper No. CB(2)644/03-04(01)), the Law Society (LC Paper No. CB(2)1094/03-04(02)) and LASC (LC Paper No. CB(2)1094/03-04(03)) at the meeting on 29 January 2004.

D of Adm's response to the Bar Association's submission was issued vide LC Paper No. CB(2)1094/03-04(01) on 27 January 2004. D of Adm's responses to the submissions made by LASC and Law Society were issued vide LC Paper Nos. CB(2)58/04-05(01) and (02) respectively on 19 October 2004.

2004-05 session

D of Adm advised on 30 September 2004 that the Administration was preparing the necessary amendment regulations to give effect to the recommendations arising from the five-yearly review of the criteria used for assessing the financial eligibility of legal aid applicants. The Administration hoped to put in place the improvement measures in the 2004-2005 legislative session.

The Administration briefed the Panel on the outcome of the 2004 annual and biennial reviews of financial eligibility limits of legal aid applicants and the proposed way forward at the Panel meeting on 14 December 2004.

3. Criminal legal aid fees system

The issue of criminal legal aid fees system was raised by the Bar Association and Law Society at the Panel meetings on 23 June and 29 July 2003 when the item on "Review of provision of legal aid services" was discussed. The two legal professional bodies were of the view that the existing system was outdated and should be reviewed in the context of the Legal Aid in Criminal Cases Rules by the Rules Committee set up under the Criminal Procedure Ordinance.

The Panel was subsequently informed that the two legal professional bodies had formed a joint working party to consider the matter and the Administration would respond to the views and recommendations of the joint working party. The Panel agreed to follow up the matter when the joint working party had completed the study.

The Administration advised on 30 September 2004 that pending the recommendations of the joint working party of the two legal professional bodies on criminal legal aid fees system, it had commenced the 2004 biennial review of criminal legal aid fees, prosecution fees and duty lawyer fees. The Administration further

To be confirmed by

advised in January 2005 that it was still in the process of consulting the relevant parties on the way forward. the Administration

Pursuant to the decision of the Panel on 28 February 2005, the Secretariat wrote to request the two legal professional bodies to advise on the progress of the work of the joint working party and the approximate timing for reverting to the Panel. The Law Society advised in writing on 16 March 2005 that each of the two professional bodies would prepare its own submission. The Chief Justice has suggested that the Director of Administration (D of Adm) should consider setting up a working party and undertaking a review. The Law Society will follow up the matter with D of Adm (LC Paper No. CB(2)1127/04-05(02) issued on 21 March 2005).

The submission (and an Executive Summary) on the review of legal aid in criminal cases from the Bar Association to the Legal Aid Services Council was issued to the Panel vide LC Paper No. CB(2)1588/04-05(01) on 18 May 2005.

4. Reciprocal enforcement of judgments (REJ) in commercial matters between the HKSAR and the Mainland

The issue was first discussed at the meeting on 20 December 2001.

To be confirmed by
the Administration

The Administration conducted a consultation exercise on the proposed arrangement for REJ in commercial matters between the HKSAR and the Mainland in March 2002 and briefed the Panel on the outcome of the consultation exercise at its meeting on 27 May 2002.

The Administration briefed the Panel on the progress of discussion with the Mainland authorities on the REJ arrangement at its meeting on 22 November 2004. The Administration hoped that the arrangements could be concluded within 2005.

5. Review of sexual offences in Part XII of the Crimes Ordinance

This item was referred by the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001.

27 June 2005

In scrutinising Part V of the Bill, the Administration accepted the Bills Committee's proposal to first deal with the offence of marital rape, leaving the other non-rape sexual offences in Part XII of the Crimes Ordinance to a full scale review at a later stage. The Bills Committee requested the Panel to follow up the progress of the review.

At the meeting on 26 April 2004, the Panel noted the background brief prepared by the Legislative Council Secretariat on "Review of sexual offences in Part XII of the Crimes Ordinance and related issues", and the Department of Justice (DoJ)'s response that it was prepared to continue reviewing the provisions related to sexual offences in the Crimes Ordinance which it originally proposed to amend in the previous legislative exercise (LC Paper Nos. CB(2)2008/03-04(01) and (02)). DoJ was requested to revert to the Panel on the outcome of the review in due course.

A paper provided by DoJ on "Review of sexual offences in Part XII of the Crimes Ordinance" was issued to the Panel vide LC Paper No. CB(2)1608/04-05(01) on 19 May 2005.

6. Court procedure for repossession of premises

At the meeting on 22 July 2002, the Panel agreed to follow up the item referred by the Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2001. The Bills Committee considered that a fast-track procedure might have to be worked out for landlords to claim repossession of premises, particularly in the event of repeated defaults in payment of rent by tenants. Additional manpower and financial resources might be required to facilitate the courts in handling these claims.

To be decided by
the Panel

At the Panel meetings on 29 January and 24 May 2004, the Judiciary Administration briefed the Panel on the measures introduced within the jurisdiction of the Judiciary to streamline the court procedure for repossession of premises. The Judiciary Administration also informed the Panel that the Chief Justice had directed that the Lands Tribunal Rules (LTR) as a whole should be reviewed, and the Panel would be consulted when the review was completed.

At its meeting on 25 April 2005, the Panel discussed the Judiciary Administration's paper on the review of the both the Lands Tribunal Ordinance and the LTR (LC Paper No. CB(2)1320/04-05(02)) and a submission from the Bar Association on the recommendations in the review (LC Paper No. CB(2)1360/04-05(01)). A revised submission from the Bar Association was subsequently issued to the Panel on 5 May 2005 (LC Paper No. CB(2)1466/04-05(01)).

The Judiciary Administration advised that Panel that legislative amendments to implement the recommendations were expected to be introduced into LegCo in 2006. The Panel had requested the Judiciary Administration to revert on the progress after completing its

consultation with the two legal professional bodies.

7. Issues relating to the imposition of criminal liabilities on the Government

At the House Committee meeting on 4 October 2002, members agreed that this Panel should follow up issues relating to the imposition of criminal liabilities on the Government or any public officers for contravening legislative provisions binding on the Government while performing official duties (LC Paper No. CB(1)2576/01-02 refers).

To be confirmed by the Administration

A Working Group was formed under the Panel to study the relevant issues and to report to the Panel with recommendations where appropriate. The report of the Working Group was considered and endorsed by the Panel at its meeting on 28 June 2004 (LC Paper No. CB(2)2917/03-04(01)). On the continuing operation of Crown immunity in Hong Kong, the Working Group recommended that the Administration should consider -

- (a) in respect of regulatory offences, that Crown immunity should be removed as a matter of policy on a case-by-case basis and when legislative opportunities arose; and
- (b) the development of alternative approaches taken in the United Kingdom and New Zealand in removing Crown immunity.

In response to the Panel's request to propose a timing for reverting on the matter, the Secretary for Constitutional Affairs advised on 11 December 2004 that the Constitutional Affairs Bureau was studying the issues together with the relevant bureaux and departments. The Administration would report to the Panel on the progress at a later stage (LC Paper No. CB(2)412/04-05(01) issued on 13 December 2004).

8. Budgetary arrangements for the Judiciary

At its meeting on 24 February 2003, the Panel was briefed on the approaches adopted by the Judiciary in promoting efficiency initiatives for achieving the target of saving of 1.8% in recurrent expenditure in 2003 - 2004, which was roughly \$18 million. The Judiciary expected that more substantial savings might be required in the years 2004-07.

To be decided by the Panel

At the meeting, Hon Martin LEE moved a motion urging the Judiciary

not to introduce, for the purpose of implementing the Government's austerity programme, any cost saving measures which would adversely affect the quality of judicial services. The motion was passed.

The Research Report on "Budgetary arrangements for overseas judiciaries" prepared by RLSD and the Administration's paper explaining the budgetary arrangements for the Judiciary were discussed at the meeting on 24 November 2003. The Judiciary Administration was requested to take note of the budgetary arrangements in the overseas judiciaries in relation to maintenance of the independent operation of the judiciaries.

The Panel followed up with the Judiciary Administration and the Administration on the budgetary arrangements for the Judiciary at a number of meetings.

At the meeting on 25 April 2005, members requested the Administration to consider and respond to a number of suggestions in two months' time.

9. Professional Indemnity Scheme of the Law Society

In response to the request of the Subcommittee on Solicitors (Professional Indemnity) (Amendment) Rules 2001, the Law Society has agreed to conduct an independent review of the insurance arrangement under its Professional Indemnity Scheme. The purpose of the review is to consider whether at the end of the five-year reinsurance contract (expiring on 30 September 2005) the Law Society should maintain the existing mutual scheme with or without amendment, or to demutualise the scheme and put into effect such other options as might be proposed as a result of the review. In its report to the House Committee on 26 October 2001, the Subcommittee recommended that this Panel should follow up the progress of the review.

To be confirmed by
the Law Society
and the
Administration

At the meeting on 18 December 2003, the Law Society briefed the Panel on the "Review Report on Insurance Arrangements of the Hong Kong Solicitors Indemnity Scheme" prepared by Willis. The Panel discussed the matter at two subsequent meetings on 26 April and 14 June 2004 respectively.

At the meeting on 22 November 2004, the Law Society informed the Panel that its members had voted for a Qualifying Insurers Scheme to replace the existing scheme. It was expected that the initial draft of the rules to implement the new scheme would be available before the end of 2004, and circulated among members of the profession in

early January 2005. The Law Society and the Administration were requested to revert to the Panel as soon as both parties had agreed on a broad outline of the scheme.

The Secretariat wrote to the Law Society on 10 May 2005 for an update on the present position on the new scheme.

10. Review of legislative provisions containing the drafting formula "to the satisfaction" of an enforcement agency

The item was referred by the Subcommittee on proposed resolution under section 7 of the Factories and Industrial Undertakings Ordinance and discussed by the Panel on 18 December 2003. 27 June 2005

The Panel requested DoJ to undertake an analysis of the judgment of the Court of First Instance on the Lam Geotechnics case with a view to assessing the extent of its impact on existing legislative provisions containing similar drafting formula, before deciding whether it should proceed to conduct a comprehensive review on the legislative provisions.

At the meeting of the Chairman with the Administration on 3 November 2004, DoJ proposed to revert to the Panel on the item at the meeting on 27 June 2005.

11. Development of Hong Kong as a legal services centre

The item was discussed by the Panel at its meeting on 22 March 2004. At the meeting, DoJ briefed the Panel on, among other things, the undertaking of a consultancy study on the demand for and supply of legal and related services in Hong Kong. DoJ provided supplementary information on the cost of the consultancy study, the consultant selected to conduct the study and other relevant details after the meeting (LC Paper No. CB(2)3139/03-04(01)). 2005-2006 session

At the meeting of the Chairman with the Administration on 3 November 2004, DoJ advised that the consultancy study had begun, and the first report by the Consultants was expected to be available after July 2005. It was agreed that the matter should be followed up in the 2005-2006 session.

12. Transcript fees

Issues relating to the fee charging mechanism for production of 27 June 2005

transcripts of court proceedings and the impact of transcript fees on litigants' ability to pursue appeals were first discussed at the Panel meeting on 23 June 2003, and followed up at the meeting on 28 June 2004. The Panel had requested the Judiciary Administration to consider, inter alia, standardizing the fee charging mechanism for both criminal and civil appeal cases, and specifying clear policy guidelines on the circumstances under which the court might exercise discretion to waive the transcript fees in appeal cases.

At the meeting of the Chairman with the Administration on 3 November 2004, the Judiciary Administration advised that it would revert to the Panel on the item at its meeting on 27 June 2005.

13. Development of a new juvenile justice system

On the recommendation of this Panel and the Panel on Security, a Subcommittee was formed by the House Committee on 7 November 2003 to follow up the policy issues arising from the review on juvenile justice system, and also discussed the Consultancy Report released by the Administration on "Measures Alternative to Prosecution for Handling Unruly Children and Young Persons : Overseas Experiences and Options for Hong Kong". The Subcommittee's report was endorsed by the House Committee at its meeting on 25 June 2004 (LC Paper No. CB(2)2895/03-04).

The Subcommittee recommended that the Administration should report to the relevant Panels on the following issues in the new legislative term -

- (a) the effectiveness of the enhanced support measures introduced by the Administration since October 2003; and
- (b) the outcome of the review on the development of a new juvenile justice system incorporating the principles and practices of restorative justice.

Where appropriate, the Panel(s) may recommend to the House Committee the setting up of a subcommittee to follow up the relevant issues.

The Administration informed the Panel in writing on 26 January 2005 that it could report on the enhanced support measures by mid-2005. However, it could not commit a firm time frame for concluding its discussions on the development of a new juvenile justice system incorporating the principles and practices of restorative justice. It will let the Panel know when it is in a position to report

To be confirmed by
the Administration

progress (LC Paper No. CB(2)783/04-05(01) issued on 31 January 2005).

The Chairman has suggested that when the Administration's report on enhanced support measures is received, the deputations which had previously given views on the matter should be invited to provide further written views. The Panel will then decide how to proceed further.

14. Limited liability for professional practices

At its meeting on 31 March 2005, the Panel considered the Research Report on "Limited Liability Partnership and Liability Capping Legislation for the Practice of Law in Selected Places" (RP04/04-05) and a submission made by the Hong Kong Institute of Certified Public Accountants on professional liability reform in Hong Kong.

23 May 2005

Members agreed that the Panel should continue discussion on the relevant issues at the meeting on 23 May 2005, with particular reference to the report prepared by the Law Society's Working Party on Limited Liability Partnership.

15. Solicitors' rights of audience

The item was proposed by the Law Society.

To be decided by
the Panel

In response to the Panel's enquiry, the Law Reform Commission's Working Party on Solicitors' Rights of Audience advised that it intended to complete a consultation paper by the latter half of 2005 to evaluate the arguments for and against extending higher rights of audience to solicitors. It would then identify the issues which need to be addressed if it is decided that such higher rights of audience should be granted. The Working Party considers it premature at this stage to predict when it would complete its work and come up with its final conclusions and recommendations. (LC paper Nos. CB(2)165/04-05(03) and (04) issued on 25 October and 2 November 2004).

At its meeting on 9 November 2004, the Panel agreed that the item should be followed up at a future meeting.

16. Reform of the law of arbitration

DoJ proposes to consult the Panel on a recommendation of the Hong Kong Institute of Arbitrators to replace the current two regimes for domestic and international arbitration with a single regime based on the international model.

27 June 2005

The item was originally scheduled for discussion at the meeting on 25 April 2005 but deferred at the request of the Administration. The Administration has advised that it would be able to brief the Panel on the item at the meeting on 27 June 2005.

17. Maximum sentence for offence of perverting the course of justice

DoJ proposes to consult the Panel on the issue of revising the sentencing limit in section 101I of the Criminal Procedure Ordinance. It will prepare and circulate a public consultation paper seeking the views of interested parties including the legal profession, the law schools and the Judiciary Administration. The consultation process is expected to be completed in mid-2005. After collating the responses, the Administration will formulate proposals for discussion by the Panel in the 2005-06 session.

To be confirmed by the Administration

18. Establishment of a third law school

When the Administration briefed the Panel on the Statute Law (Miscellaneous Provisions) Bill 2005 at the meeting on 14 December 2004, members noted the proposal to include representatives of the Chinese University of Hong Kong (CUHK) in the membership of the Standing Committee on Legal Education and Training, in anticipation that a law school would be established by CUHK. Members have expressed concern about whether the relevant parties have been consulted on the proposed establishment of a third law school in Hong Kong and the likely impact of such a development on the provision of legal services. At the request of the Panel, the Administration has responded in writing to the concerns raised by members (LC Paper Nos. CB(2)714/04-05(01) and (02) issued on 20 January 2005).

23 May 2005

Pursuant to the decision of the Panel at the meeting on 24 January 2005, the Administration and representatives of CUHK, the law schools of the University of Hong Kong and the City University of Hong Kong have been approached by the Secretariat and have agreed to attend the Panel meeting on 23 May 2005. Members of the Panel on Education would also be invited to attend the meeting.

19. Enforcement of judgment in civil cases

The issue of enforcement of Labour Tribunal Awards, among other things, had been examined by the Judiciary's Working Party on the Review of the Labour Tribunal. The Report issued by the Working Party in June 2004 was considered at a number of joint meetings of this Panel and the Panel on Manpower.

To be decided by
the Panel

The Working Party recognised that similar problems concerning enforcement of Tribunal awards also existed in the execution of judgments and orders of other levels of court, and considered that it would be inappropriate for it to recommend measures solely in the context of awards made by the Labour Tribunal. The Working Party suggested that the matter should be left to an overall review of enforcement of judgments in civil cases generally.

As agreed at the Panel meeting on 28 February 2005, the Chairman wrote to D of Adm on 11 March 2005 to seek the Administration's views on, inter alia, how the existing mechanism of enforcement of court judgments in civil cases in general, and in labour and matrimonial cases in particular, could be improved. At the meeting on 31 March 2005, members agreed that the item should be followed up by the Panel after receipt of the response from the Administration.