

**Extract from minutes of meeting on
Panel on Constitutional Affairs on 21 January 2002**

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III. Research projects undertaken by Research and Library Services Division

Research Report on "Restrictions on Activities of Former Heads of Government and Former Senior Members of Government"

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5. At the invitation of the Chairman, Head, Research and Library Services Division (H/RL) briefed members on the above Report which set out the arrangements relating to post-office restrictions on activities of former heads of government and former senior members of government, including ministers, political appointees and senior civil servants in overseas countries. Five overseas countries and places were chosen for the research exercise, i.e. France, the United Kingdom (UK), the United States (US), California of the United States (California) and Ontario of Canada (Ontario). The gist of the research findings was as follows -

Post-office restrictions for heads of government

- (a) In France and the US, there was no written rule governing post-office activities undertaken by former heads of government. Convention, media comments and public reactions etc appeared to have the effect of deterring unethical behaviour of the persons;
- (b) The UK Ministerial Code required former heads of government on leaving office to seek advice from the Advisory Committee on Business Appointments on any appointments they wished to take up within two years of leaving office;
- (c) In California and Ontario, post-office restrictions were underpinned by statute;

Post-office restrictions for senior members of government

- (d) In France, there was no legislation governing activities undertaken by former ministers of government. There was a decree governing activities of former members of ministerial cabinets within five years after leaving office;
- (e) In the UK, post-office restrictions applicable to former heads of government also applied to former ministers. Ministers generally followed the rules laid down in the Ministerial Code;

- (f) In the US, California and Ontario, there was legislation governing post-office restrictions for former senior members of government;
- (g) In most of the countries and places under study, there were written rules governing activities undertaken by former senior civil servants;

Mechanism relating to post-office restrictions

- (h) In France, the government was required to consult the Ethics Commission about the suitability of employment intended to be undertaken by members of ministerial cabinets and senior civil servants within five years of leaving government. The final decision, however, rested with the government;
- (i) In the UK, former heads and ministers of government, by convention, sought advice from the Advisory Committee on Business Appointments about appointments they intended to take up within two years of leaving office. However, the Advisory Committee would not take any action against any person if he did not follow its advice. Senior civil servants in the UK were required to obtain government approval before taking up any employment within two years of leaving government;
- (j) In the US, Ontario and California, there was no requirement for members of government to seek approval for their post-office job plans. However, there were offence provisions specified in the legislation governing post-office restrictions.

6. Dr YEUNG Sum asked whether the Administration would consider introducing post-office restrictions on the activities of the Chief Executive (CE) as well as restrictions (during and after leaving office) on the principal officials who would be politically appointed under the proposed new accountability system. Secretary for Constitutional Affairs (SCA) replied that the Administration was currently undertaking a study on the relevant issues. It would take public views into consideration and report to the Panel when it had come up with certain recommendations.

7. Ms Emily LAU said that she was in favour of implementing a statutory mechanism for regulating post-office activities of former CEs and former senior members of government to avoid conflict of interest. She suggested that in addition to providing a fact-finding research, the RLSD might also conduct a comparative analysis to assess the effectiveness of the different systems adopted in the countries and places covered in the research and the problems encountered, so as to assist the Panel in a more in-depth consideration of the issues.

8. Research Officer 4 (RO4) said that according to the reply from the UK Consulate General, the existing practices in the UK worked satisfactorily. Ministers generally complied with the rules laid down in the Ministerial Code. Former ministers, by convention, sought advice from the Advisory Committee on Business Appointments on any appointments they wished to take up within two years of leaving office. When a former minister took up a post which the Advisory Committee had considered, the Advisory Committee's advice would be published in its annual report for public scrutiny. RLSD also got favourable feedback regarding the monitoring system in Ontario.

9. RO4 added that an assessment of the relative effectiveness of the systems operating in the overseas countries might need to be based on information such as statistics on prosecutions or sanctions against non-compliance of the post-office restrictions. However, such data were scarce and difficult to obtain.

10. The Chairman expressed the view that a comparative study on the effectiveness of the systems as suggested by Ms Emily LAU would involve more complicated research efforts. He added that even if RLSD could come up with any concluded views or recommendations, they would not likely to be agreed to by all members of the Panel.

11. In response to Mr CHEUNG Man-kwong, RO4 said that post-office restrictions for former heads of government in the places under study mainly took the form of restrictions on standing for elections to the head of government, future employment, making contracts with the government or seeking to influence government decisions for compensation etc. The practices adopted varied among the places covered in the study and they were set out in Table 2 and paragraphs 5.2 to 5.13 of the Report.

12. Mr CHEUNG Man-kwong noted that as opposed to the situation in the UK, there were no written rules nor legislation in the US and France limiting the activities of former heads of government. Deterrence was only in the form of public expectation, media comments and threat of hostile public reactions etc.

13. RO4 said that according to the replies from the Consulate General of France and the US Office of Government Ethics, the use of convention for regulating activities of former heads of government were considered effective.

14. The Chairman opined that the reason for adopting different practices could possibly be attributed to the fundamental differences between the two major systems, i.e. presidential versus parliamentary system of government.

15. In response to Ms Cyd HO, RO4 said that in the five countries and places studied there were no statutory post-office restrictions on former senior members of government accepting appointments to offices with substantive political power.

Action
Column

16. In reply to Mr HUI Cheung-ching's questions on post-office benefits, SCA said that the Administration had not considered providing the principal officials appointed under the new accountability system with retirement benefits such as pensions. The arrangements with respect to CE would be considered in due course.

17. The Chairman said that issues relating to remuneration and terms of employment of principal officials could be further considered in the context of the system of accountability for principal officials.

RLSD

18. After further discussion, members requested H/RL to provide the following additional information for the Panel's consideration -

- (a) the relevant statutory provisions on post-office restrictions in the US and Ontario;
- (b) terms of office of the various regulatory or advisory authorities in the overseas countries and places and other relevant information such as whether members of those bodies were appointed on full-time or part-time basis;
- (c) whether or not there were post-office restrictions in the countries and places studied on former heads of government and senior members of government taking up paid public offices which might be perceived as involving conflict of interest in relation to their duties when in office;
- (d) a comparison table setting out post-office restrictions on and benefits for former heads of government, former ministers/political appointees/elected officials and former senior civil servants in the countries and places; and
- (e) post-office restrictions, if any, on activities of officials in the People's Republic of China equivalent to the rank of CE.

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