



立法會秘書處 法律事務部
LEGISLATIVE COUNCIL SECRETARIAT
LEGAL SERVICE DIVISION

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18 June 2007

Hon Margaret NG
Room 116, New Henry House
10 Ice House Street
Central
Hong Kong

Dear

Margaret

Thank you for asking me to advise on the issues below in relation to the work of the Bills Committee on the Civil Justice (Miscellaneous Amendment) Bill 2007 (the Bill) –

- a) Are judges absolutely forbidden to come to LegCo to explain the Bill?
- b) Is there a protocol that the Chief Justice cannot come to LegCo? What is the position in other jurisdictions?

I was given to understand by Ms. Kitty CHENG, legal adviser to the Bills Committee, that these issues were raised because it was felt that the Judiciary Administrator was not in a position to answer the Committee's questions on the policy and technical aspects of the Bill. Moreover, although the Chief Secretary for Administration is in charge of the Bill, the "true sponsor" of the Bill is the Judiciary.

It is clear from the long title of the Bill that the legislative proposals originated from the Chief Justice's Working Party on Civil Justice Reform (CJR) and the Steering Committee on CJR established by him.

Under the Rules of Procedure, it is incumbent on the Bills Committee to advise the House Committee of its deliberations on the Bill and to report thereon to the Council for the purposes of informing Members in preparation for resumption of the Second Reading debate on the Bill in Council.

I am not aware of any rule which would forbid the Committee to invite judges to its meetings for the purpose of explaining the Bill. Nor am I aware of any protocol that would make the Chief Justice unable to come to LegCo. However, it should be pointed out that the Legislative Council is always mindful that its practice or procedure does not have, or is not seen to have, the effect of compromising judicial independence.

The Committee would be well advised to approach the matter of inviting judges to attend its meetings with care, and where it appears necessary, should consider consulting the Chief Justice (as head of the Judiciary) in order that a mutually acceptable arrangement is found. Such arrangement may include an understanding that anything that might relate to judicial aspects of judges' functions would be outside the scope of discussion at these meetings. Moreover, subject to the Chief Justice's agreement, the Chief Judge, in his capacity as chairman of the Steering Committee on CJR, or his representative who is knowledgeable enough to answer members' questions on the Bill, may be an appropriate person that the Bills Committee might wish to invite.


As regards the position in other jurisdictions, a quick search on the website of the House of Commons in England found that the Lord Chief Justice and some other judges had appeared before and given evidence to Select Committees in the House of Commons. According to the House of Commons Constitutional Affairs Committee's Second Report of Session 2006-07, judges are increasingly involved in giving evidence to Select Committees. During the period covered by that report, 9 members of the judiciary gave oral evidence to it on a wide range of issues.

When asked to advise on this matter, Ms Pauline NG, Assistant Secretary General of the LegCo Secretariat, advised that when staff of the LegCo Secretariat visited Washington, USA in 2000, it was observed that informal and formal discussions were held between the Executive, Legislative and Judicial Branches over the budget. There were also frequent lunchtime

meetings between judges and legislators to exchange views on specific topics, to improve understanding on the laws concerned and to identify areas requiring improvement in legislation. Judges may also be invited to testify in committees of the Legislature on non-judicial aspects of the Judicial Branch, such as budgetary requirements, and court administration (an extract of the LegCo Secretariat Delegation Report is attached).

I hope you will find the above useful.

Yours *sincerely*.


(Jimmy MA)
Legal Adviser

Encl.

c.c. ASG1
Clerk to the Bills Committee of
Civil Justice (Miscellaneous Amendment) Bill 2007
SALA1
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**Extracted from "Delegation Report on the
US-HK Parliamentary Staff Exchange Programme in 2000"**

The Judicial Branch

4.23 There are three levels of courts in the Washington State: the District and Municipal Court and the Superior Court to deal with the first trials of cases depending on the type of cases; the Court of Appeal to deal with appeals from lower courts; and the Supreme Court to deal with appeals from the Court of Appeal and cases within its jurisdiction. The Supreme Court, which also administers the state court system, is the head of the Judicial Branch of the State Government, co-equal with the Legislative and Executive Branches.

4.24 Judges of lower courts are appointed on four-year terms, while those in the two appellate courts serve six-year terms with staggered appointments. The five justices of the Supreme Court, being non-partisan, are elected by the qualified electors of the State at the general state election at the times and places at which state officers are elected. The Chief Justice, changed every four years under the terms of the State Constitution, is selected among the elected justices of the Supreme Court. Any judges of any courts, including the Chief Justice, may be removed by joint resolution of the legislature with a three-fourths majority in both houses, for incompetence, corruption, malfeasance, or delinquency in office, or other sufficient cause stated in such resolution.

4.25 Justice Bobbe Bridge advises the delegation that notwithstanding the independent status of the courts, a lot of interactions take place between the three branches of the Government. It is not uncommon that legislators with legal background are elected to become justices of the Supreme Court. They are therefore familiar with the working of the Legislature.

4.26 The negotiation process on the budget of the Judicial Branch has always been the main bone of contention between the courts and the Legislature. Nevertheless, informal and formal discussions are usually held between the Executive, Legislative and Judicial Branches over the budget so as to enhance understanding on the purposes of expenditure and how far their targets have been achieved.

4.27 There are also frequent lunchtime meetings between judges and legislators to exchange views on specific topics. Chief Justice Hon Richard Guy stresses that these meetings help improve understanding on the laws

concerned, and identify any areas requiring improvement in the provisions in the legislation. Judges may be invited to testify in committees of the Legislature on the non-judicial aspects of the judicial branch, such as budgetary requirements, court administration etc.

4.28 On the utilization of court time, advisory case processing time standards for the trial courts have been developed by the Case Processing Time Standards Committee.

4.29 Federal issues go straight to the Federal Courts. These issues include, for example, those relating to the United States Constitution and its relationship with the State Constitution.