

**Extract from minutes of meeting on
Panel on Administration of Justice and Legal Services on 24 April 2006**

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- V. **Work of the Law Drafting Division of the Department of Justice**
(LC Paper No. CB(2)1755/05-06(03) – Paper provided by the Administration on "Mentorship Scheme in the Law Drafting Division, Department of Justice"

LC Paper No. CB(2)1755/05-06(04) – Paper provided by the Administration on "Training attachments to overseas jurisdictions"

LC Paper No. CB(2)1755/05-06(05) – Extract from minutes of special meeting on 17 October 2005)

Mentorship Scheme

42. Acting Law Draftsman (LD) briefed members on the history and operation of the Mentorship Scheme in the Law Drafting Division of DOJ, in particular the advantages of the Scheme, as detailed in the paper provided by the Administration.

43. The Chairman noted from paragraph 2 of the paper that as at 1 April 2006, there were six mentors and 21 mentees under the Scheme. She sought additional information on the mentors and mentees.

44. LD informed members that every non-directorate counsel in the Law Drafting Division was assigned a mentor in the Deputy Principal Government Counsel (DPGC) or Principal Government Counsel (PGC) rank. At present, two PGCs and four DPGCs in the Law Drafting Division were serving as mentors. The Law Draftsman and four other DPGCs in the Division were not mentors because of their heavy workload.

45. Ms Emily LAU asked whether a counsel would receive extra pay for serving as a mentor. She also sought clarification on whether the duties of a mentor were clearly set out in his job description. LD clarified that supervision of junior counsel and vetting of their work had been included in the job description of counsel at the directorate ranks. Therefore, a mentor would not receive extra pay.

46. The Chairman remarked that legislative draftsmen should be able to work independently and should not play the role of students. She expressed concern whether the mentees could only complete their work under the supervision of the mentors, and that the Mentorship Scheme had put more emphasis on the supervision of draftsmen by mentors and not on the development of their independent working ability.

47. Mr Martin LEE noted the master-pupil relationship of a mentor and his mentees under the Scheme. He said that while he supported the arrangement of a

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counsel in the directorate rank working with experienced draftsmen and inexperienced draftsmen in each team under the Scheme, he considered that counsel in the Senior Government Counsel (SGC) rank should be very experienced at work. SGCs should play the role of a mentor and not that of a mentee.

48. LD stressed that the Mentorship Scheme was put in place not because there were deficiencies in the performance of legislative draftsmen. He pointed out that while legislative draftsmen should work independently, legislative drafting was such a specialised profession that the learning process of draftsmen should continue incessantly. The Mentorship Scheme would enable them to develop skills and accumulate experience through learning from their mentors.

49. LD clarified that the Mentorship Scheme did not only entail the elements of teaching and learning. It was also a mechanism under which the work of a mentee was monitored by his mentor, and a mentor and his mentees worked as a team with division of labour among them. LD added that the work of counsel at the directorate rank was also vetted by another colleague so as to safeguard the quality and accuracy of their work.

Language proficiency requirements for appointment as legislative draftsmen

50. Ms Emily LAU said that there were many concerns about the quality of legislative drafting recently. She asked whether there was a drop in the qualifications of legislative draftsmen which necessitated the implementation of the new Mentorship Scheme in 2001.

51. LD explained that before the introduction of the Mentorship Scheme, counsel at the Government Counsel (GC) and SGC ranks did not have designated supervisors. Their English drafting was cleared by different supervisors. The Mentorship Scheme was a more effective quality control and training mechanism. The stable and close working relationship afforded by the Scheme allowed the management of the Law Drafting Division to better identify the strengths, weaknesses and development needs of a mentee.

52. LD added that many new draftsmen were recruited with the commencement of bilingual drafting of legislation before 1997. In 2000, it was anticipated that a large number of expatriate draftsmen would retire in the coming years. The Mentorship Scheme had therefore been developed to facilitate efficient imparting of drafting experience and skills and to monitor the work of legislative draftsmen more effectively.

53. LD informed members that the experience of the legislative draftsmen in the Law Drafting Division was as follows –

<u>Years of legislative drafting experience</u>	<u>Number of drafters</u>
16 years and above	4

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12 to 16 years	7
8 to 12 years	12
4 to 8 years	6
Less than 4 years	3

LD added that the majority of the draftsmen in the Division possessed eight to 12 years' experience in legislative drafting.

54. Ms Emily LAU asked whether DOJ would continue to recruit experienced expatriate Anglophone draftsmen. LD replied that while Hong Kong should draw experience in legislative drafting from other common law jurisdictions by employing expatriate draftsmen, DOJ had to comply with the language proficiency requirements for entry to the Civil Service. In line with those requirements, new appointees to the GC grade on civil service terms were required to obtain, inter alia, a Grade E or above in the Chinese Language in HKCEE or equivalent. As members of that grade, legislative draftsmen of the Law Drafting Division were subject to the same recruitment criterion. LD said that suitable Anglophone candidates could be appointed if they met all the entry requirements, including that on the Chinese language proficiency. Exception might however be allowed. Another division of the Department recruited an expatriate counsel a few years ago.

55. Ms Emily LAU, however, pointed out that it might be difficult to recruit Anglophone drafting talents with such language proficiency entry requirements. She therefore objected to the application of such entry requirement to draftsmen of the GC grade in the Law Drafting Division. She considered that such entry requirement was not conducive to attracting the best available drafting talent and thus maintaining a high quality of legislative drafting as far as the English text was concerned, the English language being the *lingua franca* of the common law. Ms LAU was of the view that DOJ should be able and aim to recruit the most suitable candidates as legislative draftsmen, including Anglophone candidates who might not meet the Chinese language proficiency requirement.

56. The Chairman, Mr Martin LEE and Ms Audrey EU concurred with Ms Emily LAU. Mr Martin LEE added that a very high level of English language proficiency and expertise in legislative drafting in the English language were required of legislative draftsmen. He considered that the Chinese language proficiency requirement should not apply to the appointment of draftsmen of the GC grade in the Law Drafting Division.

57. Ms Audrey EU expressed concern that the quality of legislative drafting would be adversely affected by the existing recruitment policy. As legislative drafting was a very specialised profession, it was difficult to recruit drafting talents. It would be a great loss to Hong Kong if experienced Anglophone draftsmen could not be appointed to the Law Drafting Division just because they could not meet the Chinese language proficiency requirement. Ms EU said that similar to the recruitment of native-speaking English teachers, suitable drafting talents should be appointed to the GC grade as legislative draftsmen even though they could not meet the Chinese

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language proficiency requirement. Although legislation in Hong Kong was drafted bilingually, it was not necessary for all legislative draftsmen to be bilingual. Ms EU urged DOJ to review its recruitment policy of legislative draftsmen.

58. LD said that DOJ had the flexibility to employ suitable candidates who did not meet the Chinese language proficiency requirement under the Non-Civil Service Contract (NCSC) Scheme, which was a scheme to allow government departments to employ temporary and short-term contract staff to meet changing service and operational needs, if such exemptions were justified. In the past few years, DOJ had employed a few retired Anglophone GCs to continue to serve in the Law Drafting Division under NCSC terms. LD added that while such exemptions were not a standard arrangement, DOJ would continue to recruit Anglophone draftsmen under NCSC terms, if necessary.

59. In response to a further question from Ms Emily LAU, LD explained that since recruitment of GCs had been frozen in recent years, DOJ had not appointed any Anglophone draftsmen on civil service terms who had not met the Chinese language proficiency requirement to its Law Drafting Division.

60. Ms Emily LAU also considered the NCSC Scheme not a satisfactory solution to address the problem. She pointed out that as the terms and conditions of service for NCSC staff were usually less favourable than those applicable to civil servants in comparable civil service ranks, they would not be as attractive to candidates of high calibre who might otherwise consider applying for work in the Law Drafting Division, other than retirees not looking for long term prospects. Ms LAU pointed out that the local universities had appointed academics with outstanding achievements in their specialties as teaching staff irrespective of their Chinese language proficiency. The Secretary for Justice (SJ) should therefore review the recruitment policy of legislative draftsmen with a view to attracting Anglophone candidates with high calibre and expertise in legislative drafting to the Law Drafting Division.

61. LD said that DOJ recognised Anglophone draftsmen's contribution towards legislative drafting. He assured members that DOJ would take into consideration the views expressed by members in reviewing the recruitment of legislative draftsmen in future.

62. The Chairman said that in scrutinising bills and other legislation, Members had expressed concern about the quality of legislative drafting. The Panel had a unanimous view on the need for improving the quality of legislative drafting. As it was unlikely that Anglophone candidates could attain the Chinese language proficiency requirement for entry to the GC grade, DOJ should review its whole recruitment policy of legislative draftsmen to the Law Drafting Division so as to facilitate and not to preclude the engagement or development of draftsmen with expertise in legislative drafting in the English language by relaxing the Chinese language proficiency requirement for appointment of legislative draftsmen.

63. The Chairman suggested that she conveyed the Panel's views and request to SJ

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in writing. The Panel would decide how to follow up the matter upon receipt of SJ's response. Members agreed. Ms Emily LAU suggested that the letter to SJ should be copied to the Secretary for Civil Service.

(Post-meeting note : The Chairman's letter to SJ and SJ's reply were issued to members vide LC Paper No.1937/05-06(01) and (02) on 8 May 2006.)

Adm 64. Ms Emily LAU requested DOJ to provide information on the years of experience of legislative draftsmen in the Law Drafting Division in the past 10 years.
Adm The Chairman also requested DOJ to advise in writing when the Chinese language proficiency was imposed as an entry requirement on the GC grade.

Training attachments to overseas jurisdictions

65. The Chairman asked whether training attachments to overseas jurisdictions would continue to be arranged for GC grade staff in the Law Drafting Division. LD responded that two overseas training attachments to Canada and the United Kingdom respectively had been arranged for two SGCs in 2005. The continued arrangement of similar training in future would be subject to availability of host offices, funds and suitable candidates.

66. The Chairman remarked that DOJ should attach priority to serving public interest, i.e. improving the drafting of legislation, ahead of other considerations. Similar overseas training attachments should be arranged for GC grade staff if such training programmes could enhance drafting quality.

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