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(These minutes have been seen
by the Administration)

Panel on Administration of Justice and Legal Services

**Minutes of special meeting
held on Thursday, 29 May 2008, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon Martin LEE Chu-ming, SC, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon Miriam LAU Kin-yee, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LI Kwok-ying, MH, JP

Member attending Hon Albert HO Chun-yan

Members absent Hon Jasper TSANG Yok-sing, GBS, JP

Public Officers attending : Item I
Judiciary Administration
Miss Emma LAU Yin-wah
Judiciary Administrator
Mr Clement LI Wan-suen
Assistant Judiciary Administrator (Corporate Services)

Item II

The Administration

Mr Ian Wingfield
Solicitor General

Ms Kitty FUNG
Senior Government Counsel

Mr S Y CHOI
Director Asia Consulting Group Limited

Mr H K YIP
Director Policy 21 Limited
The University of Hong Kong

**Attendance by
invitation** : Item II

The Law Society of Hong Kong

Mr Alex LAI
Council member

Ms Melissa PANG
Council member

Consumer Council

Mr Simon CHUI
Senior Legal Counsel

**Clerk in
attendance** : Mrs Percy MA
Chief Council Secretary (2)3

**Staff in
attendance** : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2)4

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I. Matters arising from the meeting on 26 May 2008
(LC Paper No. CB(2)2009/07-08(01) - Judiciary Administration's paper on
"Proposed creation of new rank and posts in the Judiciary and strengthening of
the directorate structure of the Judiciary Administration"

LC Paper No. CB(2)2110/07-08(01) - Judiciary Administration's paper on
"Response to issues raised by members at the meeting on 26 May 2008")

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The Chairman said that at the last meeting, the Judiciary Administration had provided a paper on "Proposed creation of new rank and posts in the Judiciary and strengthening of the directorate structure of the Judiciary Administration" (the Judiciary Administration's paper). She requested the Judiciary Administration to reconsider the English wording of paragraph 37 of the paper when preparing a paper for submission to the Establishment Subcommittee as the English and Chinese versions did not tally.

2. Judiciary Administrator (JA) introduced the paper which set out the Judiciary Administration's response to the issues raised by Members on the Judiciary Administration's paper at the meeting on 26 May 2008 (the supplementary paper).

3. Mr Martin LEE asked about the work of Assistant Judiciary Administrator (Quality) (AJA(Q)) and whether the post would be filled by a civil servant.

4. JA explained that the function of the Judiciary Administration was to provide support services to the Chief Justice of the Court of Final Appeal and judges of the various levels of courts. Given the administrative nature of the job, the Deputy Judiciary Administrators (DJAs) and Assistant Judiciary Administrators (AJAs) posts were filled by either Administrative Officers or Executive Officers. The creation of the post of AJA(Q) would be pitched at the rank of Principal Executive Officer (D1). AJA(Q) would assist the JA in steering and managing the Quality Division which held a strategic position in the long-term development of the Judiciary Administration. The Quality Division comprised the Information Technology Management Section, the Management Review Section, the Management Information Section, the Legal Reference and Library Section, the Court Reporters' Office and the Complaints Office.

5. In response to Ms Emily LAU, JA explained that the existing AJA(Quality and Operations) (AJA(O&O)) was a supernumerary post of D2 level created in July 2006 under delegated authority to head to the Quality Division and to assist DJA(Operations) in the implementation of the Civil Justice Reform. The target date of the implementation of the Civil Justice Reform was April 2009. The supernumerary post of AJA(O&O) would lapse by then. It was proposed to create a post of AJA(Q) at the rank of D1 on a permanent basis.

6. In response to Ms Emily LAU, JA explained the net increase in staff cost as set out in paragraph 18 of the supplementary paper. The proposed creation of eight judges and judicial officer (JJO) posts, upgrading of one JJO post and deletion of one JJO post would bring about an annual salary cost of \$15.4 million. At present, the usual arrangement was for JJOs to be appointed to sit as deputy judges of the Court of First Instance and District Court respectively and external deputies to be appointed to the Magistrates' Courts to provide the temporary judicial manpower required. These arrangements entailed an estimated annual cost of \$13.8 million. Hence, the net increase in annual salary cost was \$1.6 million (\$15.4 million - \$13.8 million). Taking into account the full cost for the proposal, i.e. including salaries and staff on-cost, which was mainly the cost for fringe benefits, the net increase in full cost would be \$13.7 million.

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7. Ms Emily LAU suggested that the Judiciary Administration should review the statistics on the utilisation of courtrooms. At the request of Ms LAU, JA undertook to include the following in the paper to be submitted to the Establishment Subcommittee –

- (a) Annex 1 to the supplementary paper - the target waiting time and the average number of JJOs sitting at the various levels of courts under the proposal; and
- (b) Annexes 2 and 3 to the supplementary paper - the total number of staff working in the Judiciary Administration.

8. Mr Martin LEE expressed concern about the heavy workload of judges. He said that the listing system should be flexible to ensure that judges had sufficient time to write judgments, especially after the trial of a complicated case.

9. JA responded that the workload of judges was indeed heavy. The Judiciary was operating an effective listing system in the High Court and had been making continuous improvements as appropriate. The Chief Judge of the High Court, assisted by the Listing Judges and a team of listing officers in the Judiciary Administration, was responsible for ensuring that judges would have reasonable time to prepare for cases and write judgments, particularly for long and complicated cases. In practice, the listing officers would prepare all the groundwork on listing matters, and seek directions from the Listing Judges and the Chief Judge of the High Court accordingly. The Chief Judge also held regular meetings with the listing officers to receive reports on the listing position and resolve problems which had arisen. In the event that the trial of a case ran much longer than expected, the Chief Judge would give direction to listing officers who would make arrangement to relieve the judge concerned of other cases assigned to him.

10. The Chairman said that Ms Audrey EU, who had raised some issues at the last meeting, was satisfied with the information provided in the supplementary paper. Ms EU, however, would like to know whether the guidelines and policies for listing as set out in paragraph 10 of the supplementary paper were new. JA clarified that those were existing guidelines and policies.

11. The Chairman said that both she and Ms EU felt that the principle underlying the listing system was to utilise the judges' diaries as fully as possible. She expressed concern whether judges were given adequate time to prepare for hearings and write judgments. She was aware that some judges had to work during weekends to write judgments. She pointed out that if a judge did not have enough time to prepare for the trial, the trial would take a longer time to conclude and that would increase the litigation costs. She urged that the Judiciary should operate the listing system with flexibility.

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12. Miss CHOY So-yuk asked whether it was possible to use a scientific method to quantify the time required for a judge to write a judgment. For instance, a case involving "x" days of hearing would require "y" hours in writing a judgment.

13. JA said that it was not possible to do so as the time required to write a judgement would depend on the nature and complexity of the case. As a general rule, more time would be reserved for a judge to prepare for a hearing and write a judgment if the hearing was expected to last 10 days or more.

14. The Chairman said that the submissions of the prosecution and defence lawyers and the approach adopted by judges in writing judgements would affect the time required for writing judgments. Although it was not possible to quantify the time required for writing a judgment, the Judiciary had a performance pledge on when judgment should be delivered after the conclusion of a trial.

15. Miss CHOY So-yuk expressed concern about the performance of judges and whether a check-and-balance system was in place to monitor the conduct of judges.

16. JA said that judges were appointed by the Chief Executive on the recommendation of the Judicial Officers Recommendation Commission. A person who felt aggrieved by a judge's decision might appeal in accordance with the legal procedures. A complaint against the conduct of a judge would be handled by the Chief Justice and/or the Court Leaders of the relevant level of courts. The Chairman added that the appointment and removal of judges were provided in Articles 88 and 89 of the Basic Law respectively.

17. The Chairman concluded that the Panel was satisfied with the information provided in the two papers provided by the Judiciary Administration and supported the staffing proposal. She requested the Judiciary Administration to incorporate the information requested by members in the paper to be submitted to the Establishment Subcommittee.

JA

II. Demand for and supply of legal and related services

(LC Paper No. CB(2)2039/07-08(01) - Administration's paper on "Demand for and supply of legal and related services"

LC Paper No. CB(2)2093/07-08(01) - Submission on "Study on demand for and supply of legal and related services" from the Law Society of Hong Kong

LC Paper No. CB(2)2124/07-08(01) - Consultants' response to the Law Society's submission

LC Paper No. CB(2)2352/07-08(01) - Submission on "Reports of the Consultancy Study on demand for and supply of legal and related services" from the Consumer Council)

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18. Solicitor General (SG) introduced the paper which presented the findings of the Reports on the Consultancy Study of the Demand for and Supply of Legal and Related Services (the Reports). The Reports comprised four reports, namely the Supply Study Report, Demand Study Report (Part I) - Survey of Small and Medium Enterprises (SMEs), Demand Study Report (Part II) - Survey of Households, and the Combined Analysis Report. As the Reports was voluminous, the Department of Justice (DoJ) had compiled an Executive Summary.

19. SG further said that the consultancy study commenced on 29 July 2004 and was completed in January 2008. Some of the statistics contained in the Reports might be outdated as they were based on the surveys conducted in 2006. He noted that the Law Society of Hong Kong had updated the relevant statistics in its submission. In response to the Law Society, the Consultants had prepared a paper which was tabled at the meeting (issued to members vide LC Paper No. CB(2)2124/07-08(01) on 30 May 2008).

20. In response to the Chairman's question on the way forward, SG made the following points –

Supply of legal services

- (a) the legal profession, via their professional bodies, provided a number of legal services to people in need of such services. Many non-government organisations (NGOs) also provided the public with some form of legal and related services. In addition, both the legal profession and NGOs provided legal services on a pro bono basis. As to whether the legal profession would expand their services, it was a matter for them to consider;
- (b) by the standards of developed countries, the supply of legal services as represented by the number of lawyers in Hong Kong was lower than the level that would be expected for an economy of Hong Kong's standing and the size of population. The supply of lawyers would be addressed in the course of time, as there would be an addition of 150 law graduates from the Law School of the Chinese University of Hong Kong starting from 2011;
- (c) the Administration would look into the availability and distribution of legal services generally and on a pro bono basis. At present, lawyers practised primarily in central urban areas because of the proximity to the higher courts and the solicitor firms. The expansion of legal services elsewhere had to be studied;
- (d) apart from providing legal services face to face, a lot of legal services were provided to the public by telephone and/or through the Internet. Whether legal services had been adequately advertised was a matter for further consideration;

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Demand for legal services

- (e) it was difficult to assess the extent of the reported demand as some claims and potential claims did not necessarily result in demand; and
- (f) it was difficult to quantify the demand for legal services where the disputes involved claims of less than \$10,000, as the legal costs involved would be disproportionate to the amount of disputes.

Views of deputations

21. Mr Alex LAI of the Law Society of Hong Kong said that the Law Society had given its views on a number of occasions and at various stages. Referring the submission to the Panel, he clarified that the Law Society did not come to this meeting to seek to argue against anything put in the Reports but to find out what follow up action will be taken after publication of the Reports. The submission sought to point out the following –

- (a) the supply of lawyers compared comfortably with those in Singapore and Malaysia and there would be more lawyers coming on stream in 2011;
- (b) the Reports did not mention enough of the pro bono services provided by solicitors. The submission had given an account of the work done;
- (c) there were limits as to what solicitors could do for pro bono work. Given that a lot of law firms were sole proprietors, they had limited time and resources for pro bono work. In addition, the problem faced by all solicitors was unlimited liability, as pro bono work also attracted claims; and
- (d) solicitors were not involved in claims involving \$50,000 or less which were within the jurisdiction of the Small Claims Tribunal or the Labour Tribunal where legal representation was not allowed.

Mr LAI said that while the Law Society might not agree to all the conclusions made in the Reports, it would like to know the way forward and how the Law Society could help in the provision of legal and related services.

22. Mr Simon CHUI, Senior Legal Counsel of the Consumer Council, said that the Consumer Council had just received the Reports and did not have a chance to discuss the content. His initial response was that the Reports had not covered the mediation service provided by the Consumer Council in resolving consumer disputes and the legal assistance offered by the Consumer Legal Action Fund. The Consumer Council received complaints from aggrieved consumers and resolved their disputes with traders by mediation. The number of complaints received by the Council was about 40 000 in 2007. In response to the Chairman, Mr CHUI undertook to provide written information after the meeting.

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(*Post-meeting note* : A letter dated 18 June 2008 from the Consumer Council was issued to members vide LC Paper No. CB(2)2352/07-08(01) on 19 June 2008.)

23. Mr H K YIP, Director of Policy 21 Limited of the University of Hong Kong, responded that one of the sources of information contained in the Reports came from members of the public. Some members of the public had mentioned about the legal services provided by the Consumer Council and such information was contained in the Reports, although the name of Consumer Council was not mentioned. He further said that the Consultants had tried to contact the Consumer Council for an interview but failed, so they could not include information on the services provided by the Consumer Council in the Reports.

Provision of legal and related services

24. Mr James TO said that although the Small Claims Tribunal or the Labour Tribunal did not allow legal representation, some political parties and NGOs did provide legal advice to the aggrieved persons in private. Mr TO further said that not all law graduates would become legal practitioners but they might still engage in legal related work after graduation.

25. Mr Alex LAI concurred with Mr TO. He said that there were many legally trained persons who were not necessarily legally qualified to practise as lawyers. The Law Society had about 6 000 members as of today, and 4 852 were in private practice. He noted that many political parties were offering free legal consultancy services to the general public.

26. SG said that the provision of legal and related services by legislative and district councillors were covered in paragraphs 6.1 to 6.3 of the Reports. He was surprised to find that a large number of organisations were providing legal and related services and the extent of pro bono services provided by the legal profession was quite impressive. That said, government departments, apart from the Legal Aid Department, also provided specific advisory and conciliatory services to members of the public in relation to their particular area of activity.

Unrepresented litigants

27. Mr Alex LAI recalled a survey saying that more than half of the trials in the High Court involved one litigant who was not represented. In the past 11 years, the availability of more bilingual judges might have encouraged litigants to go to court unrepresented. There were also cases where litigants started off represented, and later went unrepresented for various reasons. He was aware that a fair effort had been made by the Judiciary to set up the Resource Centre for Unrepresented Litigants to provide information for these litigants.

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28. Mr Martin LEE expressed concern about judges' complaints that court proceedings were not conducted efficiently because they had to spend more time to explain legal proceedings to unrepresented litigants. As many lawyers in Hong Kong were prepared to do pro bono work for the community, he suggested that the Administration should consider taking the lead to pull the resources together, with a view to helping litigants go to court. He said that persons who were not eligible for legal aid and could not afford to pay the legal fee would have to act in person in the court. In his view, a litigant would prefer having a lawyer representing him if legal service could be provided free of charge.

29. Ms Miriam LAU said that in the course of discussing Civil Justice Reform, Members had considered ways to assist unrepresented litigants, for instance through the assistance of the Registry of the Court. In her view, Hong Kong had sufficient lawyers and whether they were willing to assist unrepresented litigants was a financial consideration. She pointed out that given that many SMEs and individuals were neither eligible for legal aid nor had the means to afford the legal costs, how pro-bono work could be steered to cater for the need of unrepresented litigants was an area to be explored.

30. Mr Alex LAI said that given that most law firms in Hong Kong were SMEs, there was not much solicitors could do in this area. He pointed out that while giving free legal advice was a one-off service, helping an unrepresented litigant throughout a trial was an on-going service. The latter service could only be done by legal aid.

31. SG said that the apparent increase in the number of unrepresented litigants in the proceedings in the High Court did raise questions and had to be looked into. In order to ensure equality of arms, judges had to explain court procedures to unrepresented litigants and that might affect efficiency of court proceedings. One of the results of this Reports was that there would be some thinking done in this area.

32. The Chairman referred members to the profile of unrepresented litigants which was provided in Appendix R of the Reports.

Demand for and supply of legal and related services

33. The Chairman observed that the proliferation of legal services indicated that there was a great demand in the community. She said that one particular feature of the Reports was to find out the supply of legal services and assess potential gaps when the demand picture was brought into place. The Chairman shared with members her observations from the Reports as follows –

- (a) barristers spent more time on criminal-defence cases (33%), commercial and company cases (10%) and advocacy services (9%), and less time on discrimination cases (less than 1%) and consumer services (less than 1%) (paragraph 3.15 of the Reports);

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- (b) a larger proportion of barristers provided pro bono work for civil cases related to matrimonial and family, shipping, and discrimination matters (paragraph 3.37 of the Report);
- (c) solicitors spent more time on commercial and company cases (18%), criminal cases (11%), land and property cases (11%), and less time on discrimination cases (less than 1%), human rights cases (1%) and consumer services (1%) (paragraph 4.13 of the Reports);
- (d) on the demand side, a higher proportion of household respondents had experienced difficult-to-solve problems in incidents related to consumer matters (44%), damage and disturbances caused by others (38%), and employment problems (19%). The percentage was lower for incidents related to family-related problems (2%), landlord problems (2%) and problems related to services provided by professionals (3%) (paragraph 4.2 of the Reports).

34. The Chairman said that there was a mismatch between the types of services barristers did for a living (i.e. criminal-defence cases) and the types of pro bono services provided (i.e. matrimonial and family matters), and between the types of services provided by lawyers (e.g. commercial and company cases) and the types of services demanded by household respondents (i.e. consumer-related matters). As the Reports contained a lot of information, the Chairman asked about the way forward. She suggested that the Administration might start working on the demand side by identifying major areas of problems and exploring how the demand could be met. For instance, how to resolve the mismatches mentioned, and whether free legal advice should be provided, apart from legal aid.

35. SG said that the Administration would discuss internally to see what the next step should be. As consumer related matters were the major demand of household respondents, the question was open as to whether such a need should be met by the legal profession or the Consumer Council by expanding its legal advisory services. The latter arrangement was probably more cost effective. As mentioned earlier, many organisations were providing legal services to the community. It might be more appropriate for them to provide certain services as compared with private practitioners or the legal profession. SG undertook to give a progress report on the Administration's consideration in the next legislative session.

Adm

36. The Chairman said that the Law Society, being a stakeholder, could also put forth a proposal on what the Government could do in respect of the supply of legal and related services.

Law
Society

37. There being no other business, the meeting ended at 4:23 pm.