

立法會
Legislative Council

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LC Paper No. CB(2)1656/08-09
(These minutes have been seen
by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 27 April 2009, at 4:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Dr Hon Margaret NG (Chairman)
Hon James TO Kun-sun
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-yeet, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon Paul TSE Wai-chun
- Member absent** : Hon Albert HO Chun-yan (Deputy Chairman)
- Public Officers attending** : Item IV
Judiciary Administration
Mr NG Sek-hon
Deputy Judiciary Administrator (Operations)
- Item V
The Administration
Administration Wing
Miss Jennifer MAK
Director of Administration
Miss Shirley YUNG
Deputy Director of Administration (1)

Home Affairs Bureau

Ms Grace LUI
Deputy Secretary for Home Affairs (1)

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)3

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Amy YU
Senior Council Secretary (2)3

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Confirmation of minutes of meeting
[LC Paper No. CB(2)1326/08-09]

The minutes of the meeting held on 23 February 2009 were confirmed.

II. Information papers issued since last meeting

2. Members noted that in response to the Panel's request made at the last meeting, the Judiciary Administration (JA) had provided an information paper on "Appointment of Temporary/Deputy Judges and Judicial Officers" [LC Paper No. CB(2)1375/08-09(01)]. The Chairman suggested and members agreed to include the subject in the Panel's list of outstanding items for discussion.

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III. Items for discussion at the next meeting
[LC Paper Nos. CB(2)1384/08-09(01) - (03)]

3. The Chairman said that according to the list of items tentatively scheduled for discussion in the current session [LC Paper No. CB(2)1384/08-09(01)], the following items were tentatively scheduled for discussion at the next regular meeting to be held on 25 May 2009 -

- (a) Limited liability partnerships (LLPs) for legal practice; and
- (b) Pre-trial interviewing of witnesses by prosecutors.

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4. Members agreed to discuss item 3(a) above at the next regular meeting. Members also agreed that the Consumer Council be invited to give views on the subject matter.

5. As regards item 3(b) above, the Chairman informed members that the Department of Justice (DoJ) had suggested that its discussion be deferred to November 2009, as it had launched a consultation exercise on the proposed scheme of pre-trial witness interviews which would run until September 2009. The Chairman further informed members that the discussion of the item of "Class actions", originally scheduled for May 2009, had also been deferred upon DoJ's advice that the Law Reform Commission's Subcommittee on class actions was not able to issue the consultation paper in time for that meeting.

Legal Aid in Criminal Cases Rules

6. The Chairman said that the Hong Kong Human Rights Monitor (HKHRM) had recently written to the Chairman of the Legal Aid Services Council requesting the amendment of the Legal Aid in Criminal Cases Rules (Cap. 221D) to allow for legal aid to be granted in appeals to the Court of Final Appeal which did not involve a conviction. The letter was copied to her and the Secretary for Home Affairs, among others. The Administration had provided a preliminary response to HKHRM's request, indicating that the matter warranted a thorough examination of implications arising from the proposed legislative amendments.

(Post-meeting note: HKHRM's letter and the Administration's response were issued to members vide LC Paper Nos. CB(2)1428/08-09(01) and (02) respectively on 29 April 2009.)

Review of criminal legal aid fees

7. In response to Mr LAU Kong-wah's enquiry on the latest progress of the review of criminal legal aid fees, the Chairman said that the Administration had recently written to the Law Society of Hong Kong putting forth a revised proposal on criminal legal aid fees for its consideration. The Administration had indicated in the letter that it planned to report the progress of the review to the Panel at its meeting on 22 June 2009. The Chairman added that the Administration's letter, copied to her, would be circulated to members for reference. At the suggestion of Mr LAU Kong-wah, members agreed that the Clerk should enquire with the Administration whether it could revert to the Panel on the subject at the May 2009 meeting.

(Post-meeting note: The Administration's letter was issued to members vide LC Paper No. CB(2)1439/08-09(01) on 30 April 2009.)

8. The Chairman suggested that, in addition to the item of "LLPs for legal practice", the subject of "Legal Aid in Criminal Cases Rules" be tentatively scheduled for discussion at the next regular meeting to be held on 25 May 2009, pending the Administration's response on whether it could revert to the Panel on the review of criminal legal aid fees at the May 2009 meeting. Members agreed.

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(*Post-meeting note: On the instruction of the Chairman, the subject of "Legal Aid in Criminal Cases Rules" was scheduled for discussion at the meeting on 25 May 2009.*)

IV. Pilot Scheme for Building Management Cases in the Lands Tribunal
[LC Paper Nos. CB(2)1384/08-09(04) - (06)]

Briefing by JA

9. At the invitation of the Chairman, Deputy Judiciary Administrator (Operations) (DJA(O)) introduced JA's paper on the findings of the evaluation of the Pilot Scheme for Building Management Cases in the Lands Tribunal (the Pilot Scheme) launched by the Judiciary on 1 January 2008 [LC Paper No. CB(2)1384/08-09(04)]. DJA(O) informed members that in the light of the positive outcome of the Pilot Scheme, the Lands Tribunal currently aimed to adopt the measures taken in the Pilot Scheme as the standard practice with effect from 1 July 2009.

10. In reply to the Chairman, DJA(O) said that JA had responded to the submission from the Law Society of Hong Kong (the Law Society) on the subject [LC Paper No. CB(2)1384/08-09(06)] in paragraph 29 of its paper. In gist, the Judiciary noted that the Law Society generally supported the objectives of the Pilot Scheme. The Judiciary agreed that there was a need to enhance compliance with the checklist requirement on the part of solicitors. As regards the Law Society's view that the annual total of 300 building management cases handled by the Lands Tribunal, instead of the 63 completed mediated cases, should be used as the basis for calculating the success rate of mediation during the pilot period, the Judiciary considered it inappropriate to do so because not all cases were suitable for mediation. DJA(O) further said that there was no question of mediation being promoted as a "cheap form of justice", despite the fact that pro bono services were applied in the Pilot Scheme cases. He stressed that the Judiciary recognized that consensual mediation provided an efficient and effective alternative means in resolving disputes in suitable building management cases.

Discussion

11. Mr LAU Kong-wah sought clarification on whether the measures taken in the Pilot Scheme would be partially or fully implemented with effect from 1 July 2009. In response, DJA(O) said that the Pilot Scheme sought to achieve its aim of facilitating the efficient, expeditious and fair disposal of building management cases in the Lands Tribunal by (a) more active case management through the adoption of automatic and paper directions and checklists, and (b) encouraging the use of mediation. Regarding the use of automatic directions and checklists, it was recommended that with effect from 1 July 2009 these case management features would only be applicable to cases where both parties were legally represented, as unrepresented litigants might have difficulties in fully understanding and complying with them. The low compliance rate with the checklist requirement in the Pilot Scheme indicated that there was a need to enhance its compliance on the part of

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solicitors in future. As for the use of mediation, it was recommended that solicitors should explore mediation with their clients in all represented building management cases in the Lands Tribunal. For cases where one or both parties were unrepresented litigants, the Lands Tribunal might, on the application of a party or on its own motion, as appropriate, give directions that the parties should follow the relevant procedure on mediation.

12. Mr LAU Kong-wah was concerned about the adequacy of the support services provided by the Judiciary on promoting and facilitating the use of mediation in building management cases in the Lands Tribunal after the Pilot Scheme ended on 30 June 2009, particularly for unrepresented litigants who would not be required to explore mediation as an alternative means of dispute resolution. He enquired about the measures taken during the Pilot Scheme to encourage the use of mediation and whether such measures would continue after the expiry of the Pilot Scheme.

13. DJA(O) responded that in support of mediation under the Pilot Scheme, the Judiciary had set up a Building Management Mediation Co-ordinator's Office ("BMMCO") in the Lands Tribunal. BMMCO provided information and enquiry services for parties who were willing to attempt voluntary mediation before or after they issued proceedings in the Lands Tribunal. The actual mediation service would be provided by private mediators outside the Judiciary. In this regard, the BMMCO maintained a list of accredited mediators who were willing to participate in the Pilot Scheme, whether on a pro bono or fee-charging basis. DJA(O) said that all the support services provided by BMMCO would continue after the Pilot Scheme. He further said that of the 140 private mediators who had registered with BMMCO during the Pilot Scheme, 118 of them indicated that they would offer pro bono service. As the quota of such pro bono service had not yet been used up (with some 600 quota remaining), pro bono service would continue to be made available for parties who were willing to attempt mediation after the Pilot Scheme ended in June 2009. DJA(O) assured members that the Judiciary was committed to facilitating and encouraging mediation and would make its best efforts to provide adequate resources to support the initiative of promoting mediation in building management cases in the Lands Tribunal.

14. Mr LAU Kong-wah expressed concern that fewer parties would be willing to attempt to resolve their disputes through mediation after all the quota for pro bono service had been used up. The Chairman and Ms Miriam LAU echoed similar concern, cautioning that whether the parties had to pay for the mediation service would impact significantly on their decision on whether to attempt mediation, as evidenced by the fact that the parties in all the 63 completed mediation cases selected pro bono service. Ms Miriam LAU further pointed out that should mediation fail to resolve the dispute, the mediation cost would add to the total cost incurred by the parties. Such consideration could discourage parties from attempting mediation.

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15. DJA(O) responded that it was understandable that mediators could not be expected to continue to provide their service on a pro bono basis. He would not dispute that the use of mediation in building management cases in the Lands Tribunal might be reduced when pro bono service was no longer available. Nevertheless, the experience in the Pilot Scheme on Family Mediation launched by the Judiciary a few years ago showed that some parties were still willing to use mediation service to resolve family disputes even though such service was no longer provided free of charge after the said Pilot Scheme had ended, the most important considerations being whether a particular case was suitable for mediation and whether mediation would be an efficient and cost effective means of resolving the dispute. He added that to his understanding, the costs of mediation would be regarded as costs incidental to the proceedings for which legal aid would be granted and this would benefit those who were in need.

16. Ms Miriam LAU queried whether it was appropriate to conclude that the Pilot Scheme was a success on the basis of such a small number of mediated cases considering that pro bono service was offered. She said that data on the outcome of similar pilot schemes in overseas jurisdictions could provide a yardstick for measuring the success of the Pilot Scheme. She enquired whether such information could be provided for members' reference. DJA(O) undertook to provide the requested information as far as possible.

Jud
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17. Noting from the JA's paper that 19 mediated cases had reached full settlement and seven partial agreement during the pilot period, Mr LAU Kong-wah said that success in mediating settlement would bring about much savings in judicial resources. He urged the Administration to put more resources into promoting and facilitating mediation in building management cases. He suggested that a portion, say 50%, of the saved public resources resulting from the use of mediation in the Lands Tribunal be allocated for developing the mediation mechanism in the Tribunal. Mr LAU added that consideration should also be given to setting a standard fee for mediators registered with BMMCO.

18. The Chairman and Mr James TO expressed support for Mr LAU Kong-wah's view that part of the savings in public resources should be used on promoting mediation. They considered that some of the saved resources could be used to subsidize the costs of mediation service, with a view to encouraging more extensive use of mediation in resolving building management disputes. To facilitate members' further consideration in this regard, JA was requested to provide information on the estimated savings on judicial resources in monetary terms resulting from the successfully mediated cases in the Pilot Scheme. The Chairman said that upon receipt of the information from JA, the Panel would follow-up on the proposal with the Administration. Mr James TO further said that in considering members' proposal of using part of the saved resources to subsidize the costs of mediation service, the Administration should also have regard to the economic and social benefits of using mediation in building management cases. He pointed out that should these disputes be successfully resolved by mediation, much time would be saved for the owners' corporations and residents of buildings concerned and such time could be put to more productive use for the benefit of the society. DJA(O) took note of Mr TO's view.

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V. Review of the jurisdiction of the Office of The Ombudsman

[LC Paper Nos. CB(2)961/07-08(01) and CB(2)1384/08-09(07) - (09)]

Briefing by the Administration

19. At the invitation of the Chairman, Director of Administration (D of Admin) briefed members on the Administration's position in respect of the remaining sections of Part 1 and Part 2 of the Report on Review of Jurisdiction prepared by the Office of The Ombudsman (Review Report), details of which were set out in the Administration's paper [LC Paper No. CB(2)1384/08-09(07)]. Regarding the extension of The Ombudsman's jurisdiction recommended in Part 1 of the Review Report, D of Admin said that after consulting the relevant bureaux and public bodies, the Administration agreed that the Auxiliary Medical Service, Civil Aid Service, Consumer Council and Estate Agents Authority should come under The Ombudsman's jurisdiction, but considered it inappropriate to include the Board of Management of Chinese Permanent Cemeteries and Chinese Temples Committee. The Administration would proceed to work on the legislative amendments to bring the four public bodies under The Ombudsman's jurisdiction. Part 2 of the Review Report examined possible developments of the ombudsman system for Hong Kong in four areas, namely protection and promotion of human rights, access to government information, protection of whistleblowers and establishment of specialized ombudsmen such as a medical ombudsman office. Having consulted the relevant policy bureaux, the Administration came to the view that there was no justified need for introducing changes to the existing mechanisms and practices in the four areas. Nevertheless, the Administration would keep in view the developments in these areas and would follow up with the relevant Panels should there be any new proposals.

Discussion

Inclusion of the Statutory Independent Police Complaints Council (IPCC) under the purview of The Ombudsman

20. Mr LAU Kong-wah said that during the scrutiny of the IPCC Bill introduced into the Legislative Council (LegCo) in July 2007, the relevant Bills Committee had discussed the question of whether the statutory IPCC to be established under the Bill should be subject to the Ombudsman's jurisdiction. Given that the statutory IPCC would soon come into operation on 1 June 2009, Mr LAU asked whether there was any plan to review the issue of whether it should be brought under The Ombudsman's jurisdiction.

21. D of Admin understood that the issue had been considered during the scrutiny of the IPCC Bill, and the Administration's view then was that the statutory IPCC should not be brought under The Ombudsman's ambit for the time being.

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22. Mr LAU Kong-wah recalled that the relevant Bills Committee had sought the view of The Ombudsman on the matter. The Ombudsman saw no objection in principle to bringing the statutory IPCC within the purview of the office of The Ombudsman. Mr LAU reiterated that consideration should be given to reviewing the issue following the formal establishment of IPCC as a statutory body.

Clerk

23. The Chairman suggested and members agreed to bring up the issue for discussion after the statutory IPCC had been in operation for some time.

Financial services ombudsman

24. In response to Mr LAU Kong-wah's enquiry on the Administration's position on the establishment of a financial services ombudsman proposed in a recent study of banking stability commissioned by the Hong Kong Monetary Authority, D of Admin explained that no mention was made in the Administration's paper of the proposal as this was not raised in The Ombudsman's review and the Administration's paper had focused on responding to the idea of establishing a medical ombudsman office highlighted in Part 2 of the Review Report. She clarified that the Administration had not ruled out the proposal concerning the establishment of a financial services ombudsman. She added that to her understanding, the relevant policy bureau was conducting preliminary research into the proposal. Should the proposal be further taken forward, she believed that views of the public would be sought and the relevant LegCo Panel would also be consulted.

Whistleblower legislation

25. The Chairman said that while it was stated in paragraph 25 of the Administration's paper that it did not see a practical and justified need for whistleblower legislation in the area of public administration, the recent incident of the Undersecretary for Commerce and Economic Development having used his name card in place of income proof when applying for the renewal of his domestic helper's contract had aroused public concern about the need to introduce legislation to protect whistleblowers against punishment or retaliation by their employers. Such concern arose when the Immigration Department was conducting an internal inquiry into how the incident came to light. The Chairman further said that she would raise an oral question on the incident at the Council meeting on 29 April 2009. She suggested that in the light of the discussion at that Council meeting, members could further consider at the next Panel meeting whether it was necessary, and if so how, to follow-up the issue of whistleblower legislation. Members agreed.

Clerk

26. Concluding the discussion, the Chairman said that relevant issues in Part 2 of the Review Report, such as the establishment of specialized ombudsmen for financial and medical services, and the need for whistleblower legislation, could be followed up by the relevant Panels.

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VI. Any other business

Visit to the Judiciary

27. The Chairman said that the Chief Justice had offered to invite the Panel to visit the Judiciary. Members agreed that the invitation be accepted and that the Clerk should liaise with JA on the date and the programme of the visit.

Clerk

28. There being no other business, the meeting ended at 5:45 pm.

Council Business Division 2
Legislative Council Secretariat
22 May 2009