

立法會
Legislative Council

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LC Paper No. CB(2)2341/08-09
(These minutes have been seen
by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 22 June 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 Audrey EU Yuet-mee, SC, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon Paul TSE Wai-chun
- Member attending** : Hon Paul CHAN Mo-po, MH, JP
- Members absent** : Hon Albert HO Chun-yan (Deputy Chairman)
Hon Miriam LAU Kin-ye, GBS, JP
- Public Officers attending** : Items IV and V
Home Affairs Bureau
Miss Christine CHOW
Principal Assistant Secretary for Home Affairs

Mr Thomas Edward KWONG
Deputy Director of Legal Aid
- Item VI
Department of Justice

Mr Ian Wingfield
Solicitor General

Ms Kitty FUNG
Senior Government Counsel

Home Affairs Bureau

Miss Christine CHOW
Principal Assistant Secretary for Home Affairs

Mr Thomas Edward KWONG
Deputy Director of Legal Aid

Item VII

Department of Justice

Mr Benedict LAI
Law Officer (Civil Law)

Miss Susie HO
Director of Administration and Development

Mr Simon LEE
Deputy Law Officer (Civil Law)

Ms Sou CHIAM
Deputy Principal Government Counsel

Attendance by : Item V
invitation

Hong Kong Bar Association

Ms Audrey Campbell-Moffat

The Law Society of Hong Kong

Mr Michael Vidler
Member of the Criminal Law and Procedure Committee

Ms Christine CHU Wing-shuet
Assistant Director of Practitioners Affairs

Item VI

Hong Kong Bar Association

Ms Audrey Campbell-Moffat

The Law Society of Hong Kong

Mr Alex LAI
Council member

Ms Joyce WONG
Director of Practitioners Affairs

Item VII

Hong Kong Bar Association

Mr Robin Egerton

The Law Society of Hong Kong

Mr Lester HUANG
Council member

Ms Joyce WONG
Director of Practitioners Affairs

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

Staff in attendance : Mr Watson CHAN }
Head, Research and Library Services Division }
Dr Yuki HUEN } For item IV only
Research Officer 8 }

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)1902/08-09]

The minutes of the meeting held on 25 May 2009 were confirmed.

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II. Information papers issued since last meeting

[LC Paper Nos. CB(2)1873/08-09(01) and (02)]

2. Referring to her letter dated 9 June 2009 to the Secretary for Justice (SJ) regarding the Department of Justice (DoJ)'s decision not to prosecute the bodyguards of Miss Bona Mugabe, daughter of the President of the Republic of Zimbabwe, in relation to the assault of two journalists in Hong Kong and SJ's reply dated 12 June 2009, the Chairman said that recent media reports had also revealed that the bodyguards concerned were working in Hong Kong without work permits when they allegedly assaulted the journalists. The incident raised concern as to whether certain people were given preferential treatment under the law.

Clerk

3. Members agreed to schedule a special meeting to discuss DoJ's decision not to prosecute the bodyguards and invite SJ to attend the meeting. Members also agreed that the two legal professional bodies be invited to join the discussion. Members noted from media reports that there was an audio recording of the incident and requested the Secretariat to obtain a copy of the recording or transcript, if available, to facilitate discussion at the meeting.

Clerk

4. Ms Audrey EU noted from media reports that a newspaper had requested information on past claims for diplomatic immunity, but the Administration had responded that it did not keep record of such information. Ms EU suggested raising issues regarding the mechanism and procedures for granting of diplomatic immunity and information on past cases of claims for immunity in Hong Kong at the special meeting. Members agreed.

III. Items for discussion at the next meeting

[LC Paper Nos. CB(2)1904/08-09(01) and (02)]

5. Members agreed to cancel the regular Panel meeting originally scheduled to be held on 27 July 2009.

IV. Research report on "Legal aid systems in selected places"

[RP01/08-09]

6. Head of Research and Library Services Division of the Legislative Council Secretariat (RLSD) (H/RL) briefed the meeting on the research report on "Legal aid systems in selected places" (the Research Report) by way of a power-point presentation. Members noted that the research had studied the legal aid systems in England and Wales of the United Kingdom (UK), the Province of Ontario of Canada and the State of New South Wales of Australia in respect of the following areas: development of legal aid system, authority responsible for providing legal aid, scope of legal aid services, eligibility for legal aid, legal aid fees for lawyers, legal aid expenditure per capita and legal aid services at the community level. Referring to

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Appendix II to the Research Report, H/RL informed members that the updated legal aid expenditure per capita in Hong Kong for 2008-2009 was \$75.

(Post-meeting note: The Chinese version of the Research Report and the power-point presentation materials provided by RLSD were tabled at the meeting and issued to members vide LC Paper Nos. CB(2)1970/08-09 and CB(2)1991/08-09(01) on 22 and 23 June 2009 respectively.)

7. Noting from the Research Report that private practitioners in all the three places under study were dissatisfied with the fees for legal aid services and that private practitioners in UK had even expressed the intention to leave the legal aid market, Mr LAU Kong-wah enquired about the reasons for such dissatisfaction. H/RL said that as complex issues were involved, more time would be needed to gather such information if deemed necessary by members. Mr LAU said that to ensure that no one would be denied access to justice due to lack of means, it was vital for the Administration to maintain the sustainability of the legal aid system. Principal Assistant Secretary for Home Affairs (PASHA) said that it was the underlying policy objective of the Administration to ensure the sustainable development of the legal aid system.

8. Mr LAU Kong-wah further noted from the Research Report that the legal aid expenditure per capita in Hong Kong was low as compared to the three places under study, which appeared to bear testimony to the inadequate supply of legal aid services in Hong Kong. PASHA responded that the Administration needed time to study the basis for arriving at the data on legal aid expenditure per capita in Hong Kong and the places under study in the Research Report. To her understanding, the respective share of civil and criminal legal aid expenditure in relation to the total legal aid expenditure in Hong Kong was very different from UK. In Hong Kong, civil legal aid accounted for some 80% of the total legal aid expenditure. In the case of UK, certain types of civil cases had been removed from the ambit of the publicly-funded legal aid system and were done on the basis of conditional fee arrangements. The Chairman said that it was noteworthy that the legal aid expenditure per capita in UK (HK\$430) was much higher than that in Hong Kong (\$75), notwithstanding that in UK, personal injury work, one of the major categories of civil cases covered by legal aid in Hong Kong, was now done almost entirely on the basis of conditional fee agreements rather than through the legal aid system.

9. Mr Paul TSE asked whether RLSD had information on the national income per capita in the places under study, which would be useful in assessing the adequacy of the existing level of legal aid expenditure per capita in Hong Kong. H/RL said that RLSD had tried to gather such information. However, as the data collected for the three places were calculated on different bases, it was not appropriate to use them for comparison purpose. The Chairman requested RLSD to provide the information to members if available.

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10. Mr LAU Kong-wah asked whether information on the number of successful and unsuccessful applications for legal aid in Hong Kong and the three places under study could be made available for members' reference, as such information could throw light on the demand for and supply of legal aid services in these places. The Chairman requested RLSD to provide such information as far as practicable.

RLSD

11. Mr Paul TSE asked whether consideration would be given to adding to the Research Report information on places with more conservative systems such as Singapore. The Chairman said that the places covered in the Research Report were agreed upon by the Panel before the research was conducted. She considered the three places selected appropriate as they were common law jurisdictions with well-developed and comprehensive legal aid systems from which much useful reference could be drawn.

12. Noting that Mr Paul CHAN, Chairman of the Legal Aid Services Council (LASC), was present at the meeting, the Chairman asked about the action to be taken by LASC, which was tasked to, inter alia, advise the Administration on legal aid policy, on the Research Report. Mr Paul CHAN said that LASC would study the Research Report carefully.

13. Mr LAU Kong-wah said that it would be useful if RLSD could provide, on the basis of the information in the Research Report, an analysis on possible directions of changes to be made to the legal aid system in Hong Kong in respect of the relevant issues which had been discussed by the Panel, such as means to broaden the access of middle class to legal aid.

14. The Chairman said that the Research Report contained a lot of useful reference material which could be used as the basis of future discussions on issues relating to the provision of legal aid services such as establishment of an independent statutory legal aid authority, review of community legal advice service, scope of the Supplementary Legal Aid Scheme and financial eligibility limits for legal aid. She suggested that written views be sought from LASC, the two legal professional bodies and concerned organizations on the Research Report, and that the Administration be requested to provide a response to the views received. She further suggested that the Panel should consider the views received on the Research Report at the first regular meeting of the Panel in the next legislative session. Members agreed.

Clerk

15. Responding to the Chairman's enquiry on when the Administration would revert to the Panel on its recommendations for the current five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants, PASHA said that the Administration would do so as soon as practicable. She added that the current five-yearly review, including any necessary legislative work, had to be completed by 2012 at the latest.

V. Criminal legal aid fees system

[LC Paper Nos. CB(2)1904/08-09(03) and (04), CB(2)1955/08-09(01) and CB(2)1969/08-09(01)]

Briefing by the Administration

16. PASHA briefed members on the latest progress of the Administration's discussion with the Law Society of Hong Kong (Law Society) on the fee rates for solicitors handling criminal legal aid cases, details of which were set out in the Administration's paper [LC Paper No. CB(2)1904/08-09(03)]. She informed members that the Administration had offered for the Law Society's consideration in April 2009 a revised rate for Instructing Solicitors at the District Court level, which was proposed to be further increased from \$520 to \$620 per hour, having regard to various factors including public affordability. She explained that under the existing legislation, fees payable to a solicitor or counsel for criminal legal aid work were calculated on a lump-sum rather than hourly basis, depending on the nature of the service rendered. The existing and proposed remuneration to solicitors undertaking criminal legal aid cases as set out in Enclosure A to the Administration's paper had been simplified as hourly rates to facilitate discussions with the Law Society. The Administration hoped to proceed with the introduction of legislative amendments to bring into effect the new criminal legal aid fee structure and fees as soon as possible upon reaching agreement with the Law Society and was prepared to review the fee rates in two years' time upon implementation of the new rates. She further informed members that apart from the new fee structure and fee rates, the Administration had separately completed the biennial review of criminal legal aid fees, prosecution fees and Duty Lawyer fees, as detailed in Enclosure B to the Administration's paper. On the basis of the biennial review, the fees would be raised by 8.3% in accordance with the movement in Consumer Price Index (C) during the reference period from July 2006 to July 2008.

Views of the legal profession

The Hong Kong Bar Association (Bar Association)

17. Ms Audrey Campbell-Moffat of the Bar Association said that the revised proposal on fee rates for solicitors offered by the Administration was a matter for discussion between the Law Society and the Administration. That said, the Bar Association considered that the revised fee rates for solicitors were still too low, particularly having regard to the increasing complexity of criminal cases going to the District Court in the past 10 years. The Bar Association agreed with the view that solicitors should be remunerated properly for their work in criminal legal aid and considered the Law Society's request for parity with civil legal aid work justified.

The Law Society

18. Mr Michael Vidler, member of the Criminal Law and Procedure Committee of the Law Society, said that the Administration had only slightly revised its offer by an increase of \$100 in the fee rate for Instructing Solicitors at the District Court level. The Law Society was of the view that the revised fee rates were inadequate and did not properly reflect the responsibilities of and professional services rendered by solicitors in criminal legal aid cases which were getting increasingly complex. The Law Society also had grave concern about the slow pace of the negotiation and the Administration's failure to address properly the major principles of issues it had raised, namely the lack of parity in the remuneration for solicitors engaged in civil and criminal legal aid work, and the yardsticks for reviewing criminal legal aid fees in future review. Referring to the references to fees "not exceeding" certain rates in Enclosure A to the Administration's paper, he said that the Law Society had all along been asking for fixed rates so that it knew in certain terms what the final offer would be. He also expressed dissatisfaction that the Administration replied to the Law Society's letter dated 26 May 2009 [LC Paper No. CB(2)1955/08-09(01)] only a few days before the Panel meeting, leaving the Law Society little time to consider the issues raised in the reply.

(Post-meeting note: The Administration's reply dated 16 June 2009 to the Law Society's letter dated 26 May 2009 was issued to members vide LC Paper No. CB(2)2016/08-09(01) on 24 June 2009.)

Discussions

19. Mr James TO said that the latest revised proposal on fee rates for solicitors was still far from being a reasonable one. Nonetheless, having regard to the fact that the proposal represented a significant increase over the present rates and in order that the legal profession could benefit from the improved remuneration package as soon as possible, he and Mr Albert HO were of the view that the present proposal for solicitors put forth by the Administration, though not satisfactory, could be accepted as a basis with the view to achieving further upward adjustment in future. Mr TO stressed, however, that future review of fee rates for solicitors should be based on mutually accepted principles. Mr LAU Kong-wah echoed similar views. Mr LAU said that as the negotiation between the two parties had reached a stalemate, he considered that the present proposal by the Administration should be accepted so that legislative amendments could be introduced and the increased rate of payment could be implemented as soon as possible, on the understanding that discussion would continue on the basis for the fee rates. Mr LAU added that it was incumbent upon the Administration to respond to the two questions of principle raised by the Law Society in paragraph 18 above.

20. The Chairman requested the Administration to explain its position on the Law Society's proposal for parity in the remuneration for criminal and civil legal aid work. She further asked how the Administration would take forward the matter and the time frame for the legislative work for implementing the revised criminal legal aid fee structure and fee rates.

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21. Referring to the Administration's reply dated 16 June 2009 to the Law Society [LC Paper No. CB(2)2016/08-09(01)], PASHA made the following points -

(a) Parity with remuneration for civil legal aid work

The Home Affairs Bureau (HAB) had carefully examined the Law Society's proposal for minimizing the disparity of remuneration for solicitors engaged in civil and criminal legal aid cases and had also consulted DoJ on the matter. Their consolidated view was that the nature of and work entailing to civil and criminal legal aid cases was different. As such, HAB could not accede to the request at this stage.

(b) Yardsticks for reviewing criminal legal aid fees

In reviewing the fee proposals, the Administration adopted the following general yardsticks: (i) general compatibility of the criminal legal aid fee system for the defence lawyers with the fee regime for the prosecution counsel; (ii) rectification of inconsistency between policy on payment to solicitors and counsel; (c) reasonable and effective remuneration for legal aid assigned lawyers within the remits of public affordability; and (d) prudence in public money spending. In considering the level of criminal legal aid fees, the Administration had also drawn reference to the remuneration to in-house government lawyers handling criminal cases. The remuneration for Government Counsel and Legal Aid Counsel in 1992 and 2009 (when turned into hourly rates) were respectively \$260 and \$468 per hour, while the rates for Senior Government Counsel and Senior Legal Aid Counsel in 1992 and 2009 were respectively \$310 and \$687.

(c) Way forward

While the present offer did not reflect fully the market rate, the Administration sincerely hoped that the Law Society would accept it as the basis so that the Administration could proceed with the necessary legislative work as soon as practicable. Upon the implementation of the new rates, the Administration would continue to discuss actively with the Law Society with a view to reviewing the rates in two years' time.

22. The Chairman pointed out that unlike in-house government lawyers, private practitioners had to shoulder the operation costs of their business. She sought clarification as to whether the hourly rates for in-house government lawyers quoted by the Administration were inclusive of overhead costs such as office rental. PASHA said that the hourly rates were calculated with reference to the full annual staff cost of the concerned ranks. Apart from salary, the hourly rates were also inclusive of fringe benefits such as pension, medical and dental benefits and educational allowance, but not overheads such as office rental.

23. Mr Michael Vidler reiterated that the Administration had failed to provide a proper explanation for the basis upon which the present offer was arrived at and the yardsticks for determining the fee rates in future review. He pointed out that, in merely stating that the nature of and work entailing to civil and criminal legal aid cases was different, the Administration had not provided any convincing justification for the disparity in remuneration between civil and criminal legal aid cases. He further said that one possible argument for such disparity was there was no regime for the Legal Aid Department (LAD) to recover costs from DoJ in criminal cases where the defendant was acquitted. However, whilst DoJ would pay costs to LAD in civil cases such as judicial review, a similar regime could be instituted to ensure LAD would have access to greater funds. He stressed that criminal cases were no less complicated than civil ones, not to mention that personal liberty was stake in criminal cases. He also reiterated his dissatisfaction with the Administration's provision of information to the Law Society, such as the remuneration for in-house government lawyers, at a late stage, which was not conducive to a constructive dialogue between the two sides. From his observation, the Administration tended to better its offer or provide more information to the Law Society shortly before the Panel was scheduled to discuss the matter. He suggested that the Panel should revisit the matter within a sooner period of time, say, in three months' time, to see whether there would be a breakthrough in the discussions between the two parties. Ms Audrey Campbell-Moffat remarked that it would facilitate the resolution of the matter if all parties concerned engaged in active dialogue and explained their position fully during discussions.

24. The Chairman, however, said that it appeared unlikely that the two sides could reach agreement soon. Mr LAU Kong-wah echoed a similar view. He urged the two parties to continue discussion with a view to reaching agreement as soon as practicable.

25. Mr James TO said that ultimately it was for the Administration to decide when to submit to the Legislative Council the legislative proposals for implementing the revised structure and fees for criminal legal aid work. Nevertheless, in determining the level of fees for solicitors, it was important that the Administration should have regard to the principle of ensuring equality of arms between prosecution and defence. He stressed that justice would not be served if, due to differences in remuneration, defendants in legally aided criminal cases were represented by less experienced lawyers than the prosecution. The Chairman suggested that the Administration might make reference to the level of remuneration for private counsel it engaged for prosecuting criminal cases as a basis for determining the fee rates for solicitors undertaking criminal legal aid work.

26. In summing up, the Chairman said that despite lengthy discussions, the Administration and the Law Society had yet to resolve their differences on the fundamental question of the appropriate basis for setting the level of fees for solicitors in criminal legal aid work. While the Administration considered the fee rates from a budgetary point of view and with reference to the remuneration of in-house

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government lawyers handling criminal cases, the Law Society's position was that the fees should be on a par with civil legal aid cases. She urged the two parties to iron out their differences as far as possible and report to the Panel when they were able to come to an agreement on the matter.

VI. Demand for and supply of legal and related services

[LC Paper Nos. CB(2)1904/08-09(05) and (06)]

27. Solicitor General (SG) introduced the Administration's paper on its consideration of the Reports on the Consultancy Study on the Demand for and Supply of Legal and Related Services (the Reports) published by DoJ in May 2008 [LC Paper No. CB(2)1904/08-09(05)].

28. The Chairman expressed strong disappointment and dissatisfaction with the absence of concrete proposals from the Administration to address the gaps in service availability and unmet legal needs identified in the Reports. She was particularly dissatisfied that the Administration had not put forth any proposal for reviewing the effectiveness and adequacy of the Free Legal Advice Scheme, which had never been properly reviewed since it was established some thirty years ago. She was highly disappointed that the Administration did not see the need to do anything about the unmet legal needs in the community, notwithstanding that the Reports had clearly pointed to an unmet demand for legal advice service in the community, as evidenced by the findings on the considerable amount of difficult-to-solve problems encountered by individuals who were not getting help from the legal services currently provided.

29. Dr Priscilla LEUNG also expressed strong disappointment with the Administration's paper which failed to respond to the Panel's long-standing call for improvements to be made to community legal advice services which were greatly needed by members of the public. She further said that the Administration was also yet to respond to members' request for providing legal aid services to Hong Kong permanent residents involved in legal proceedings on the Mainland. She urged the Administration to act expeditiously to reform the existing legal advice service to ensure the public's access to justice.

30. SG responded that it was not the Administration's view that nothing needed to be done to deal with the service gaps and unmet service demands for legal and related services identified in the Reports. In fact, various initiatives were currently undertaken by DoJ and other Government bodies to address some of the unmet demands identified in the Reports, details of which were set out in paragraphs 6 and 7 of the Administration's paper, albeit some of the initiatives were already in train before the consultancy study was concluded. For instance, in relation to mediation, the Working Group on Mediation chaired by SJ had been working actively to map out plans to employ mediation more extensively in handling not only higher-end commercial disputes, but also relatively small scale community disputes, with a view to meeting some of the service needs identified in the Reports. As regards the adequacy of existing free legal advice service, SG said that DoJ was not in a position

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to comment on the issue as it fell outside the scope of its policy responsibilities. In response to the Chairman's enquiry on the amount spent on the consultancy study, SG said that it was in the region of \$3 million to \$5 million.

31. The Chairman reiterated her grave dissatisfaction with the Administration's view that the existing practice for provision of free legal advice service should be maintained. She stressed that the Free Legal Advice Scheme was inadequate to meet the needs for legal advice service in the community and a review of the Scheme was long overdue. With an annual government provision of only some \$600,000 each year, the Free Legal Advice Scheme was run on the voluntary contribution of lawyers. In her view, the Administration should not continue to rely on the legal profession providing legal advice service on a pro bono basis and there was an urgent need for the Administration to put monetary resources into establishing a properly-funded professional legal advice system. She asked representatives of the two legal professional bodies whether they supported the need to conduct a survey on the adequacy and effectiveness of the Free Legal Advice Scheme. Ms Audrey Campbell-Moffat of the Bar Association and Mr Alex LAI of the Law Society replied in the affirmative. Ms Campbell-Moffat added that it was clear that many members of the public faced with legal problems had not availed themselves of legal advice service and the public would stand to benefit from an organized professional system of legal advice service.

32. Dr Priscilla LEUNG stressed that it was incumbent upon the Administration to consider seriously the unanimous view of members on the need to provide an adequate publicly-funded legal advice system.

33. PASHA said that she had given some thoughts on ways to improve the existing free legal advice service. Referring to paragraph 6(3) of the Administration's paper, PASHA said that the Community Legal Information Centre (CLIC), a website run by the University of Hong Kong (HKU) and funded by DoJ, contained a wealth of useful information on a wide range of legal topics relevant to the daily lives of the general public. In her view, if members of the public who had made an appointment for legal advice service under the Free Legal Advice Scheme could access the CLIC website for general legal information pertaining to their case before meeting with the volunteer lawyer concerned, he/she would be able to make better use of the 20 to 30 minutes of interview time with the lawyer. She suggested that HAB could liaise with DoJ, HKU and the two legal professional bodies to discuss ways to strengthen the interface between the CLIC website and the Free Legal Advice Scheme during the coming summer months.

34. At the request of the Panel, PASHA undertook to work out proposals for improving the existing operation of and support to the free legal advice service and dissemination of basic legal information through CLIC to the public in consultation with the DoJ, the Judiciary, the two legal professional bodies and relevant non-governmental organizations, and report to the Panel at the beginning of the next legislative session.

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HAB

35. PASHA said that she would like to take the opportunity to inform members that legal advice had confirmed that legislative amendments were not required for implementing the proposal of extending legal aid to cover mediation in legally-aided matrimonial cases. At the request of the Chairman, PASHA agreed to advise the Panel of the latest position in writing after the meeting. PASHA further said that LAD would inform the two legal professional bodies in writing on the logistical arrangements for implementing the proposal as soon as possible.

VII. Development of mediation services

[LC Paper Nos. CB(2)1904/08-09(07) and (08)]

36. Law Officer (Civil Law) briefed members on the latest developments in the work by the Working Group on Mediation (Working Group), chaired by SJ, and its three Sub-groups, details of which were set out in the Administration's paper [LC Paper No. CB(2)1904/08-09(07)]. Members noted that the Working Group was planning to complete its report with recommendations in December 2009 for public consultation in early 2010.

37. At the invitation of the Chairman, Mr Robin Egerton of the Bar Association said that the Bar was supportive of mediation. The Bar had been participating in the Working Group and was well satisfied with the progress of its work.

38. At the invitation of the Chairman, Mr Lester HUANG of the Law Society said that there were reports from various practitioners that LAD had indicated to assigned solicitors that they must first approach mediators who were willing to provide mediation services on a pro bono basis, and it was only if they were unable to secure such pro bono services that LAD would pay for the mediator's fees. The Law Society had written to LAD to seek clarification on the matter on 8 May 2009. In its reply dated 14 May 2009, LAD advised that it was not its policy to require its assigned solicitors to approach mediators who were willing to provide mediation services on a pro bono basis before it approved the engagement of fee-charging mediators. However, it was also stated in LAD's reply that as the costs incurred in a case must not be disproportionate to the amount to be recovered and mediators' fees were subject to Director of Legal Aid's first charge, LAD expected its assigned solicitors to consider, in suitable cases, the availability of pro bono mediation services in the interest of aided persons. Mr HUANG said that the Law Society was of the view that to require solicitors to assess the fees that would be incurred in mediation services and help the legally-aided client to see whether the fees involved were disproportionate to what might be recovered was an onus unfairly put on the legal profession. At the request of the Chairman, Mr HUANG agreed to keep the Panel informed of the Law Society's further exchanges with the Administration on the matter.

(Post-meeting note: The correspondence between the Law Society and LAD dated 8 and 14 May 2009 respectively were issued to members vide LC Paper Nos. CB(2)2016/08-09(02) and (03) dated 24 June 2009.)

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39. Mr Lester HUANG further said that legal practitioners had reflected to the Law Society that they had encountered difficulties in securing suitable venues for providing mediation services, for which at least two rooms were required for the parties concerned. He added that the demand for venues for conducting mediation was expected to increase following the implementation of the Civil Justice Reform and the more widespread use of mediation.

40. In response to Dr Priscilla LEUNG's enquiry on the existing venues for mediation services, Mr Lester HUANG said that the venues in the Hong Kong International Arbitration Centre were among the most frequently used mediation venues, but they were in great demand and not easy to book. For disputes involving large sums of money, the parties concerned might be willing to rent hotel rooms for conducting mediation. In further response to Dr Priscilla LEUNG's enquiry on the feasibility of using conference rooms in law firms for conducting mediation, Mr HUANG said that the parties concerned might be willing to do so if the conference rooms were in the mediator's law firm, but it might not be so if the rooms were located in the office of either party's legal representative. He added that a law firm might not be willing to make available two conference rooms for mediation services due to cost consideration.

41. In reply to the Chairman's enquiry on the pilot scheme to be conducted on 1 July 2009 under which two community centres would be made available for conducting pro bono mediation free of charge, Director of Administration and Development, DoJ said that the pilot scheme sought to maximise the use of resources in the community to facilitate community mediation. With the assistance of the relevant District Councils, two rooms in each of the two designated community centres were made available for pro bono mediation service providers during specified periods. Subject to the review on the effectiveness of the pilot scheme, consideration could be given to extending the scheme to community centres in other districts. For international or commercial disputes, the parties concerned might consider renting suitable venues for mediation.

42. Concluding the discussion, the Chairman said that the lack of suitable mediation venues was one of the prime concerns expressed by the profession. She requested the Administration to further explore ways to address such concern.

VIII. Any other business

43. There being no other business, the meeting ended at 6:49 pm.