

立法會
Legislative Council

LC Paper No. CB(1)1690/08-09

(These minutes have been
seen by the Administration)

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Panel on Public Service

**Minutes of meeting held on
Monday, 20 April 2009, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon LEE Cheuk-yan (Chairman)
Hon Mrs Regina IP LAU Suk-ye, GBS, JP (Deputy Chairman)
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon TAM Yiu-chung, GBS, JP
Hon LEUNG Kwok-hung
Hon WONG Sing-chi
Hon IP Wai-ming, MH
Dr Hon PAN Pey-chyou
- Member attending** : Hon WONG Kwok-hing, MH
- Member absent** : Hon LI Fung-ying, BBS, JP
- Public officers attending** : **Agenda item III**
Mr Robin IP
Deputy Head, Central Policy Unit

Mr Raymond FAN, JP
Secretary to the Commission on
Strategic Development, Central Policy Unit

Agenda item IV

Miss Denise YUE, GBS, JP
Secretary for the Civil Service

Mr Andrew H Y WONG, JP
Permanent Secretary for the Civil Service

Ms Mimi LEE
Deputy Secretary for the Civil Service 3

Attendance by invitation : **Agenda item IV**

Government Disciplined Services General Union

Mr POON Chi-ming
Committeeman

Mr WAT Ki-on
Consultant

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (1)2

Staff in attendance : Ms Sarah YUEN
Senior Council Secretary (1)6

Miss Winnie CHENG
Legislative Assistant (1)5

Action

- I Information papers issued since last meeting**
(LC Paper No. CB(1)1084/08-09(01) - Submission on implementation of five-day week in public libraries from a group of public library staff
- LC Paper No. CB(1)1265/08-09(01) - Administration's response to the submission on implementation of five-day week in public libraries)

Members noted the above papers issued after the last meeting.

II Items for discussion at the next meeting scheduled for 18 May 2009

(LC Paper No. CB(1)1260/08-09(01) - List of outstanding items for discussion

LC Paper No. CB(1)1260/08-09(02) - List of follow-up actions)

2. Members agreed to discuss the following items at the next regular meeting on Monday, 18 May 2009, at 10:45 am –

(a) Government outsourcing; and

(b) Integrity enhancement initiatives for civil servants.

Admin

3. The Chairman requested that the Administration's paper on item (a) above should also provide information on the recent trend of engagement of agency workers by government departments. Members also agreed to invite deputations from major civil service consultative councils and staff associations to give views on the item.

Clerk

III Retention of one supernumerary post of Administrative Officer Staff Grade C in the Secretariat to the Commission on Strategic Development

(LC Paper No. CB(1)1260/08-09(03) - Administration's paper on retention of one supernumerary post of Administrative Officer Staff Grade C in the Secretariat to the Commission on Strategic Development)

4. The Deputy Head, Central Policy Unit, (DH/CPU) briefed members on the Administration's proposal to retain one supernumerary post of Administrative Officer Staff Grade C (AOSGC) (D2) as Assistant Secretary to the Commission on Strategic Development (CSD) for three years with effect from 1 July 2009 to 30 June 2012 in the CSD Secretariat within the Central Policy Unit (CPU).

Discussion

5. Mr WONG Sing-chi and Mr CHEUNG Man-kwong considered that

entrusting CSD with the function of studying long-term strategic issues was sidelining the functions of the Legislative Council (LegCo). They said that Members belonging to the Democratic Party opposed the establishment of CSD and the current staffing proposal for the following reasons –

- (a) The role of CSD overlapped with various policy bureaux/departments (B/Ds) and advisory bodies which were performing similar tasks;
- (b) From the staffing perspective, with an establishment of 14 officers, including three directorate staff, the CSD Secretariat's staffing level was not justifiable in consideration that the CSD Secretariat had only organized 20 CSD meetings, seven workshops and eight informal meetings from 1 July 2007 to 28 February 2009; and
- (c) CSD's studies of many strategic issues did not seem to have much impact on government policies. Moreover, unlike the elected LegCo, CSD members were confined mainly to the conservative pro-government camp.

6. Dr Margaret NG shared the views of Mr WONG Sing-chi and Mr CHEUNG Man-kwong, and she also expressed opposition to the proposal. The Chairman declared interests as a non-official member of CSD. He queried CSD's effectiveness of its functioning, pointing out that CSD's Task Group on Supporting Families in Helping its Disadvantaged Members had failed to make progress in alleviating poverty or supporting low-income families. He also considered that the Task Group on Constitutional Development had not made any achievement in its work, and that the Task Group on National Education's recommendation pertained to funding relevant initiatives only. He said that he did not see CSD was delivering any value-added service.

Role and operation of CSD

7. DH/CPU emphasized that CSD, chaired by the Chief Executive (CE), was the most important advisory body to the Government and CSD's membership was broadly representative. Its role was to provide a platform for discussion on important issues relevant to the long-term development of Hong Kong, e.g. the National 12th Five-Year Plan and regional co-operation. CSD was able to widely gauge community views and help forge consensus, thereby laying the foundation for formulating specific policies. If a policy formulated involved legislative proposals for its implementation or additional funding, the Administration would submit relevant legislative proposals or funding requests to LegCo for scrutiny and endorsement. DH/CPU pointed out that CSD

mainly played a role of seeking community's views on important issues at an inception stage and its work would not undermine LegCo's roles and functions.

8. Mr WONG Sing-chi considered that the small number of meetings CSD held to discuss each issue (at most, three to four meetings on each issue), was inadequate to address issues in-depth. He reiterated that CSD's role overlapped with that of policy B/Ds, and the issues considered by CSD could have been studied by relevant policy B/Ds. The Chairman echoed Mr WONG's views and pointed out that issues such as the development of Pearl River Delta Region and the National 12th Five-Year Plan could be followed up by the Commerce and Economic Development Bureau.

9. DH/CPU responded that CSD provided a useful forum for the Government to canvass views from prominent members of the community on issues that straddled many policy areas. Moreover, ideas and suggestion from CSD members were channeled to the relevant policy B/Ds for follow-up. The Administration could make use of CSD to ensure that the policy proposals would be more acceptable to the community before they were put forward to LegCo for discussion. The Secretary to CSD (S/CSD) supplemented that CSD conducted in-depth discussion on important issues that straddled different policy areas. It could help forge consensus on contentious issues within the community. As senior representatives of concerned B/Ds attended meetings of CSD and its task groups, they would take on board any views and suggestions raised by CSD members at the meetings.

The workload and staffing of CSD

10. S/CSD pointed out that the CSD Secretariat on average serviced one meeting per month and the issues discussed were important to the long-term development of Hong Kong. He pointed out that CSD served as a platform for the Government and different sectors of the community to jointly discuss various strategic issues straddling different policy areas. CSD had in fact collected useful views from the meetings held, especially from those of the task groups set up to study specific issues with strategic significance. Moreover, to enable Hong Kong to address the economic challenges arising from economic transformation and the global financial tsunami, the CSD Secretariat had organized additional focused discussion sessions and initiated policy research studies, such as those set out in paragraph 8 of the Administration's paper, so as to formulate constructive recommendations with expert input for consideration by the Administration.

11. Mr WONG Sing-chi, however, considered that the servicing of about one meeting per month could not justify the CSD Secretariat's directorate establishment and the current staffing proposal. DH/CPU and S/CSD pointed out that the complexity and diversity of work of the CSD Secretariat had significantly increased. The CSD Secretariat was responsible for initiating

and conducting in-depth policy researches as well as preparing discussion papers on various strategic issues pertaining to the long-term development of Hong Kong. The CSD Secretariat also had to follow up recommendations made by members at the meetings. By way of illustration, S/CSD referred to the issue of strengthening Hong Kong's role as a bridge in the co-operation between the Mainland and the Association of Southeast Asian Nations that had been discussed by CSD. To follow up the view that Hong Kong should make reference to Singapore's experience in forging regional co-operation in recognition of the shift in economic momentum from the western countries to Asia, CSD had commissioned the National University of Singapore to conduct a study in this regard. The CSD Secretariat was required to closely liaise with the researchers to coordinate and provide input into the research work. The CSD Secretariat would also coordinate and follow up with relevant B/Ds on the findings of the research study when they were available.

12. DH/CPU explained that before proposing to retain the supernumerary AOSGC post, the Administration had critically reviewed the work of the CSD Secretariat in the light of actual operational experience. S/CSD said that when the supernumerary AOSGC post was first created in 2006, the Administration had originally proposed to establish it as a permanent post but it was later changed to a one-year supernumerary post in recognition that both the volume and complexity of CSD's work were subject to fluctuation. The post was extended for two years in 2007 in consideration of its importance to enhancing CSD's work quality, especially where co-ordination work and research were concerned. In anticipation of the increasing complexity and volume of CSD's work, it was considered necessary to retain the post by three years in order to maintain a high quality service to CSD. S/CSD explained that the other D2 post in the CSD Secretariat was a Government Town Planner (GTP) post responsible for offering expert and professional advice on planning matters. As CSD discussed and tackled many issues which were not confined to planning, the retention of the supernumerary AOSGC post was deemed necessary.

Queries about the proposal to retain the supernumerary AOSGC post on top of the existing GTP post

13. Mr CHEUNG Man-kwong counter-proposed to delete the permanent GTP post in exchange for the retention of the supernumerary AOSGC post as he failed to see the role the GTP was expected to play in CSD's discussion of issues such as attracting talents, helping the disadvantaged family, national education and constitutional development as listed in enclosure 2 to the Administration's paper.

14. S/CSD responded that Mr CHEUNG Man-kwong's proposal would affect the CSD Secretariat's support to CSD. He pointed out that GTP provided to CSD professional and technical support in studying the global,

regional and Mainland development trends which had significant impact on Hong Kong. He explained that in view of the growing importance of regional development to the long-term development of Hong Kong, CSD would need to step up its efforts in studying and discussing issues central to the subject, such as regional co-operation, the National 12th Five-Year Plan, the development of Pearl River Delta Region, etc. There was a need for the GTP post to be responsible for providing professional input to development trends and demographic issues, and assisting in the work of the Pan Pearl River Delta Panel of CPU from a professional perspective. On the other hand, in recognition that the National 12th Five-Year Plan would impact on many B/Ds, the supernumerary AOSGC post was required to strengthen CSD's efforts in policy researches and to provide the necessary leadership and support at the directorate level for the effective functioning of CSD.

15. The Deputy Chairman declared interests as a non-official member of CSD. She pointed out that compared with other places, Hong Kong was lagging behind in policy researches. She was appreciative of CSD's efforts in conducting researches, particularly in organizing many seminars on metropolitan development. She urged CSD to further gear up policy researches. She considered that as CSD was chaired by CE and attended by senior officials of B/Ds, it provided a good opportunity for CE as well as these government representatives to listen to different community views as relayed by CSD members. She expressed support for the current proposal. She, however, suggested that to enhance the role of CSD, CE should consider appointing more persons who had different views from the government to it.

Release of findings of research work conducted by CSD

16. Dr Margaret NG considered there was no need for CSD if CE was more willing to listen to LegCo Members' views. She urged CSD to publicize the findings of its policy researches. In this regard, the Chairman also enquired about the position of a research on retirement protection for the elderly conducted in 2006, and about the policy regarding disclosure of research findings.

17. DH/CPU responded that the findings of certain researches, e.g. Study on Cooperation of Producer Services Industries between Hunan and Hong Kong, 2008 Study on Low-Wage Workers in Hong Kong, Study on the Trends in Family Attitudes and Values in Hong Kong, Study on Hong Kong's Professional Immigrants from Mainland China and their Strategies of Adaptation, and Study on Social Enterprises in Hong Kong, had been published on CPU's website.

18. Dr Margaret NG and the Chairman requested CSD to provide a list of its policy researches the findings of which had not been publicized, and to explain the reasons for not disclosing the findings. Dr NG expressed regret

about the Head of CPU who in her view should not have succumbed to such lack of transparency regarding CSD's researches which were all conducted using taxpayers' money.

Admin

19. DH/CPU agreed to provide a written response to members' request. He explained that CPU's researches were conducted for the government's internal reference only. CPU would not disclose those research findings which were sensitive in nature. S/CSD supplemented that summaries of views expressed at CSD meetings and research reports, e.g. the study on Singaporean experience in regional co-operation, would be made available to the public through the CSD website.

(Post-meeting note: CSD's response was issued vide LC Paper No. CB(1)1557/08-09 on 12 May 2009.)

Voting on the proposal

20. As proposed by Mr CHEUNG Man-kwong, the Chairman put the staffing proposal to vote. On the Chairman's instruction, the voting bell was rung for two minutes. After voting, the Chairman declared that three members voted for the proposal and four members voted against it. The Chairman declared that the Panel did not support the proposal.

21. The Deputy Chairman said that she had voted for the proposal because, unless CSD was dissolved, there was a need to ensure that it was adequately staffed to cope with its heavy workload. Mr CHEUNG Man-kwong and Mr LEUNG Kwok-hung considered that even if the supernumerary AOSGC post was not retained, there would still be adequate directorate support at the CSD Secretariat for the functioning of CSD as there were two directorate staff members at D3 and D2 levels respectively within the Secretariat.

IV Disciplinary mechanism and related procedures for disciplined services and civilian grades

(LC Paper No. CB(1)1260/08-09(04) - Administration's paper on disciplinary mechanism and related procedures for disciplined services and civilian grades

LC Paper No. CB(1)1297/08-09 - Background brief prepared by the LegCo Secretariat)

Meeting with the Government Disciplined Services General Union (the General Union)

22. Mr POON Chi-ming, Committeeman of the General Union, said that the General Union was concerned about the lack of progress made by the Administration in rectifying problems regarding the disciplinary system and procedures for the disciplined services as pointed out by the General Union earlier. Highlighting a judgment handed down by the Court of Final Appeal (CFA) in March 2009 concerning the denial of legal representation for a civil servant during a disciplinary proceeding conducted under a disciplinary service legislation (DSL), Mr POON urged the Civil Service Bureau (CSB) to conduct a comprehensive review of the disciplinary procedures for the disciplined services in consultation with the Department of Justice (DoJ) to rectify any unconstitutional practices under the existing disciplinary system and procedures. Moreover, pending completion of the proposed comprehensive review, the handling of all on-going disciplinary cases should be suspended.

23. Mr WAT Ki-on, Consultant of the General Union, supplemented that the Administration should review all provisions relating to disciplinary procedures in DSL to ensure they did not contravene the common law. To ensure that the relevant investigations were conducted in accordance with the principle of natural justice, there was also a need to uphold fairness at the hearings as well as in the disciplinary procedures. He further requested CSB to look into the following problems –

- (a) various disciplined services departments handled the misconduct of causing disrepute to departments differently in terms of interpretation of the misconduct and the punishments imposed; and
- (b) as different from the civilian grades, minor misconduct committed by disciplined services grade civil servants could result in severe punishment, such as compulsory retirement, dismissal and reduction in rank.

24. While noting the views of Mr POON Chi-ming and Mr WAT Ki-on, SCS said that over the years, the Administration had implemented measures to streamline and improve the disciplinary process, and had kept the civil service disciplinary system under regular review in the light of actual operational experience and court judgments. In particular, SCS made the following points –

- (a) The operation of different disciplined services departments was governed by their respective legislation and regulations, and it was against this background that there were some variations in the disciplinary proceedings of these departments. In response to the concerns of the staff sides, the Administration had set up a task group with the

management of the various disciplined services to review the issues raised. It would then discuss with the stakeholders concerned on what changes should be made. It was envisaged that the entire process would take more than one year to complete.

- (b) SCS had reservation about the proposal of suspending the processing of all disciplinary cases pending completion of the work of the task group. The Administration's plan was to address more urgent problems, such as the legal representation issue highlighted by the CFA judgment. The Administration intended to introduce legislative amendments to amend those provisions in the relevant DSL which had been ruled unconstitutional, and to formulate guidelines for the disciplinary authority to consider applications for legal representation from civil servants. Such guidelines could be implemented without waiting for completion of the relevant legislative amendment exercise.
- (c) As to certain discrepancies in the disciplinary procedures of the disciplined services (e.g. provision of tape recording in addition to written records of disciplinary hearings upon request by the defaulters), the task group was examining the relevant issues with disciplined services.

25. On the suggestion of suspending the processing of disciplinary cases, SCS pointed out that such arrangement had been made insofar as cases involving disciplinary hearings conducted under the relevant provisions of four DSL (including those under the Police (Discipline) Regulations which had been ruled unconstitutional by CFA) were concerned. While the guidelines for the disciplinary authority to consider applications for legal representation from civil servants and to conduct disciplinary hearings with legal representation were being drawn up, the civil servants concerned in these suspended cases would be invited to consider whether they wished to apply for legal representation.

26. SCS invited members to note that formal disciplinary action in respect of middle and junior ranking officers in the disciplined services grades was taken in accordance with the provisions in the relevant DSL. As for formal disciplinary action in respect of civil servants in the civilian grades and senior ranking civil servants in the disciplined services grades, it was taken in accordance with the provisions laid down in the Public Service (Administration) Order (PS(A)O) and the related Public Service (Disciplinary) Regulation (PS(D)R). Under section 8(3) of PS(D)R, civil servants subject to PS(A)O might be assisted in their defence by a person other than a public servant (including lawyers) as CE might authorize. As such, there was no

need to suspend the processing of disciplinary cases involving civil servants in the civilian grades and senior ranking officers in the disciplined services grades, as they were already permitted under section 8(3) of PS(D)R to seek authorization from CE for legal representation.

27. Mr IP Wai-ming questioned why civil servants subject to disciplinary proceedings still had to apply for legal representation if denial of which had already been ruled unconstitutional by CFA. He was concerned that if CE did not approve such applications, his decisions might be challenged by law. In response, SCS read out paragraph 103 of the CFA judgment that "*there seems to me to be little doubt that the effective functioning of the Police Force as a disciplined service will not be impaired by allowing its disciplinary tribunals a discretion to permit an officer to be legally represented where fairness so dictates*". The Administration's interpretation was that what CFA considered unconstitutional was a total ban on legal representation, or put in other words, it was unconstitutional to take away the discretion of the disciplinary tribunals to grant legal representation on a case-specific basis, in the relevant provisions of the DSL. It was apparently not the intention of the CFA judgment that the disciplinary tribunal had to permit legal representation in all circumstances and as a matter of course. SCS added that DoJ also supported the interpretation.

28. Dr Margaret NG declared interests as the legal representative of the police officers involved in two of the cases mentioned in the Administration's paper, namely the *Lam Siu Po v. Commissioner of Police* case (FACV No. 9 of 2008) and the *Yeung Chung Ming v. Commissioner of Police* case (FACV No. 22 of 2007). She pointed out that following the CFA judgment and the judgment of the Court of First Instance on the judicial review related to the Harbour Fest event, it was clearly established that all civil servants were entitled to legal representation during a disciplinary proceeding, and any decision of the disciplinary authority leading to denial of such a right could be subject to judicial review. She further asked how long it would take to draw up the relevant guidelines. She advised that the plan to draw up such guidelines could not prevent civil servants concerned from immediately applying for legal representation at disciplinary hearings if they needed to.

29. SCS explained that the plan to provide the relevant guidelines was well-intended and it aimed to provide necessary information to help the appropriate authority to consider applications for legal representation at disciplinary hearing and to conduct such hearing with the presence of legal representation. It was not intended to prevent civil servants concerned from applying for legal representation at disciplinary hearings now if they so wished. SCS pointed out that if a middle and junior ranking officer in the disciplined services grades who was currently subject to a disciplinary proceeding submitted an application for legal representation, the disciplinary authority would consider the application upon receipt of any such application. The civil servants concerned did not need to wait to submit the application only after all

guidelines had been issued. After the application had been processed, the disciplinary proceeding could be resumed. SCS further said that it might take about three to six months' time to complete drawing up all relevant guidelines. On the other hand, if a middle and junior ranking officer in the disciplined services grades who was currently subject to a disciplinary proceeding had decided not to seek legal representation and requested continuation of the disciplinary proceeding without suspension, the request would also be acceded to.

30. SCS reiterated that civil servants subject to PS(A)O should be well aware of their right to legal representation. She clarified that the judicial review related to the Harbour Fest event was not on whether the relevant disciplinary provision permitted legal representation or not, but rather on whether the decision of the disciplinary authority to refuse legal representation to the civil servant concerned in that particular case was fair.

Admin

31. At the request of Mr WONG Kwok-hing, SCS agreed to provide a breakdown by disciplined services departments of the number of applications for legal representation received from civil servants subject to DSL since the handing down of the CFA judgment in March 2009. The breakdown would also provide the number of applications approved, if any.

32. Mr LEUNG Kwok-hung shared Dr Margaret NG's concern. He opined that the right to legal representation was important to civil servants of disciplined services grades, especially as they could be subject to disciplinary proceedings on claims that they had brought disrepute to their department and, if the officers so accused were not legally represented, they would have difficulty in challenging such abstract claims. He urged the Administration to amend the relevant DSL as soon as possible.

33. Mr LEUNG Kwok-hung referred to the judicial review related to the Harbour Fest event and pointed out that it was undesirable to give CE the authority to exercise discretion regarding whether to permit legal representation under section 8(3) of PS(D)R. SCS clarified that CE's authority under section 8(3) of PS(D)R to consider applications for legal representation had been delegated to SCS. As such, in the above case it was the then SCS's decision not to permit legal representation.

34. In response to Mr WONG Kwok-hing's enquiry, Mr POON Chi-ming of the General Union opined that the arrangement as explained by SCS above (paragraphs 24, 25 and 29) were broadly in line with that demanded by the General Union. He reiterated that the General Union hoped that a comprehensive review should be conducted to look at whether there were any more provisions under the existing DSL which might also be unconstitutional. For example, he noted that some disciplined services departments had imposed such a harsh restriction on their officers who were subject to disciplinary

proceedings that they could only invite defence representatives from a pool of officers of some specified ranks in the same department.

35. In response, SCS said that the Administration's plan was to address urgent matters such as the legal representation issue first. It would also keep the civil service disciplinary system under regular review in the light of actual operational experience and court judgments in order to identify areas for improvements.

36. Mr WAT Ki-on of the General Union pointed out that there had been cases where investigation had dragged on for as long as two years, during which the civil servants concerned were debarred from promotion, acting appointment and even awards including travel awards and granting of awards by CE. He also asked whether legal representation would be permitted at the early stage after formal investigation had commenced in order to uphold natural justice.

37. SCS responded that long drawn-out disciplinary cases might have occurred due to different reasons, e.g. refusal of the staff concerned to respond to the findings of preliminary investigations. She further confirmed that there was no restriction on legal representation at the early stage of disciplinary procedure under both PS(A)O and DSL. In fact, there had been cases of civil servants engaging lawyers for legal advice as soon as preliminary investigation commenced.

38. The Deputy Chairman welcomed the planned introduction of the necessary legislative amendments to enable civil servants subject to DSL to seek legal representation as appropriate, and enquired whether financial assistance would be provided to the civil servants concerned to help them meet the legal costs so arising, so that they would not have pecuniary embarrassment which could in turn lead to disciplinary action. The assistance might take the form of injection of funds into the departmental welfare funds of the disciplined services. SCS responded that there was no plan to do so. She pointed out that in the case of a police officer, he would only be subject to disciplinary action for pecuniary embarrassment if such was the result of his imprudent management of financial affairs.

39. The Deputy Chairman pointed out that before a decision was made on whether pecuniary embarrassment was caused by imprudent management of financial affairs, the officer concerned might have already been transferred to another post or interdicted as necessary and be subject to salary reduction. She maintained that the Administration should seriously consider providing financial assistance to ensure that an officer would not be denied the right to legal representation and a fair hearing merely due to a lack of means. In response, SCS pointed out that there were already sufficient safeguards for ensuring a fair hearing, e.g. an officer taking his case to the court might get

financial assistance under the legal aid system.

40. Dr PAN Pey-chyou shared the Deputy Chairman's concern. He however pointed out that if the management side also sought legal representation at the disciplinary hearing, the hearing might become more like a court hearing involving complicated procedures and hostile confrontation. He proposed that in drawing up the relevant guidelines, the Administration should consider adopting simpler procedure for handling cases which only involved minor misconduct and proposing that legal representation should be considered only in cases involving serious allegations. SCS responded that the above views would be considered in the context of drawing up the guidelines on legal representation, and pointed out that the CFA judgment had similarly warned against “over-lawyering” and “over-judicialization”.

41. Dr Margaret NG further drew the Administration's attention to the following when reviewing the relevant DSL –

- (a) As early as 1986, the relevant legislation in the United Kingdom had been amended to the effect that if the consequence could be as serious as dismissal and the like, the public servant subject to disciplinary proceedings should invariably be permitted legal representation if so requested. The relevant application procedures had also been laid down in the law. Under the relevant legislation in Canada, it was provided that as long as a misconduct was sufficiently serious to trigger the institution of formal disciplinary hearings, the officer concerned should be allowed legal representation if so preferred. Hong Kong was therefore lagging behind and it should review its disciplinary practices as soon as practicable to ensure that they were up-to-date and fair. In the process, reference should be made to the overseas practices highlighted above.
- (b) Although the *Yeung Chung Ming v. Commissioner of Police case* (FACV No. 22 of 2007) had confirmed that interdiction was not a disciplinary punishment and there was no presumption of guilt in interdiction, the existing practice that a civil servant who was interdicted would normally have 50% of his salary withheld upon being charged with a disciplinary misconduct or criminal offence was unreasonable. The proportion of salary withheld might be reduced only under exceptional circumstances. In the above court case, the salary deduction arrangement had created financial hardship for the civil servant concerned. Moreover, it should be noted that police officers were mostly interdicted once they were under

investigation for serious misconduct or criminal offence and they would have their salary reduced during interdiction.

Admin

42. SCS agreed that in drawing up the relevant guidelines, reference should be made to the principle as enshrined in the relevant overseas legislation that, if the consequence of disciplinary proceedings could be as serious as dismissal and the like, the officers concerned should be permitted legal representation.

43. Dr Margaret NG said that it was noted in the *Lam Siu Po v. Commissioner of Police* case (FACV No. 9 of 2008) that the information on Mr LAM's financial conditions submitted to the Force Welfare Officer in support of his application for financial assistance had been used to institute formal disciplinary action against him. In response to the Chairman's concerns as to whether Force Welfare Officers might need to observe the principle of confidentiality in handling information about their clients, SCS said that she had no comments on the issue.

44. Noting the principle set out in the Administration's paper that a more senior civil servant found guilty of misconduct would normally receive a heavier punishment than a junior civil servant guilty of the same misconduct, Mr CHEUNG Man-kwong enquired how the principle had been/would be observed in the following cases –

- (a) the recommendation of officers who were subject to on-going disciplinary investigations for long-term acting and even substantive promotion as highlighted in the 2007 report of the Public Service Commission (PSC);
- (b) another disciplinary case in which an officer had been convicted and sentenced to nine-month imprisonment. After having served the imprisonment sentence, the officer was recommended by the department concerned to be retained in the civil service simply by punishing him with a severe reprimand plus a fine. The case was criticized by PSC in its 2007 report;
- (c) a recent case where an assistant director of the Environmental Protection Department was found to have spent more than half of his time at the office surfing obscene websites for at least a year as reported by the media; and
- (d) another case where a government counsel was caught writing personal blogs during office hours as reported by the press.

45. SCS responded that PSC played an independent monitoring role to ensure that matters relating to appointment and promotion of officers in the middle and senior ranks of the civil service and to discipline of the relevant grades of civil servants were processed in a proper and equitable manner. The fact that PSC had urged the department concerned to follow up the case highlighted in paragraph 44(b) above demonstrated PSC's effectiveness in performing its monitoring role. She said that, as a general rule, officers subject to on-going disciplinary investigations should in principle not be recommended for acting appointment or promotion. The case mentioned in paragraph 44(a) was an exceptional case that would need to be fully justified by the department concerned. She further said that the imposition of heavier punishment on a more senior civil servant found guilty of the same misconduct as that committed by a junior civil servant was a guiding principle adopted by the Administration. Mr CHEUNG Man-kwong urged the Administration to adhere to this guiding principle.

V Any other business

46. There being no other business, the meeting ended at 1:00 pm.

Council Business Division 1
Legislative Council Secretariat
26 May 2009