LC Paper No. CB(2)591/10-11(09)

Extract from the minutes of meeting of the Panel on Health Services on 11 June 2007

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VI. Consultation Paper on Enduring Powers of Attorney
(LC Paper No. CB(2)1798/06-07(01))

33. Mr Stuart STOKER of the Law Reform Commission took members through the background and main thrust of the above Consultation Paper. Specifically, the Law Reform Commission (LRC) proposed the following two options to amend the existing Enduring Powers of Attorney Ordinance (Cap. 501) in order to improve the low take-up rate of enduring power of attorney (EPA) in Hong Kong -

(a) abolish the need for medical certification altogether; and

(b) retain the medical certification requirement, but allow the doctor and solicitor to witness the EPA separately.

Section 5(2)(a) of Cap. 501 required that an EPA must be signed in the presence of a solicitor and a medical practitioner at the same time. LRC also proposed to amend the existing statutory EPA form and its explanatory note by drafting them in plain language in a more user-friendly format. Members' views/comments were invited on the questions set out in paragraph 3.30 of the Consultation Paper.

34. While supporting relaxing the execution requirement for EPA, Ms Audrey EU considered that the main reason for the low take-up rate of EPAs in Hong Kong was due to lack of public awareness and education about the EPA concept. Ms EU suggested that solicitors who were asked to prepare wills by their clients to also mention EPA to these clients. Another way to improve the low take-up rate of EPAs in Hong Kong was to extend the scope of EPAs to enable the attorney to make decisions relating to the donor's health care.

35. Mr Stuart STOKER responded that in many jurisdictions such as England and Wales, it was common practice that when a client came to a solicitor to make a will, the issue of EPA would be raised at the same time by the solicitor to the client. He saw no reason why the same could not be adopted in Hong Kong. LRC would be happy to ask the Law Society of Hong Kong to encourage its members to do so. Mr STOKER further said that LRC had considered extending the scope of EPAs to enable the attorney to make

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decisions relating to the donor's health care in its study on how to improve the take-up rate of EPAs in Hong Kong. For a variety of reasons, LRC had decided to keep advance directives in relation to medical treatment separate from the EPA. On 16 August 2006, LRC released its report on Substitute decision-making and advance directives in relation to medical treatment. In relation to advance directives, LRC had put forward a model form of advance directive which could be used by those wishing to make decisions as to their future health care. Although there were separate forms and procedures for EPAs and advanced directives in relation to medical treatment, there was no reason why a solicitor could not mention both EPA and advance directive to their clients when the latter came to him to make a will.

36. Ms Audrey EU said that in the event that the requirement of a medical practitioner be present at the execution of an EPA be removed should not prevent an attorney from seeking the opinions of a medical practitioner if in doubt. Mr STOKER responded that in jurisdictions where there was no mandatory requirement of certification of EPAs by a medical practitioner, good practice demanded that medical certification should be obtained in cases of doubt.

37. Dr KWOK Ka-ki considered that the low take-up rate of EPAs in Hong Kong was not mainly due to the existing requirement that a solicitor and a doctor must both be present at the signing of an EPA, as most people who wished to make an EPA were probably staying in hospitals where they should have no difficulty in finding a medical practitioner to sign the EPA, but in the lack of public understanding about the EPA concept. To address such, Dr KWOK urged LRC to enlist the participation of doctors, patients' groups and medical social workers in raising public awareness and education about the EPA concept. Dr KWOK remained of the view that the scope of EPA should best be extended to cover advance directives in relation to medical treatment.

38. Mr Stuart STOKER agreed that people should not encounter much difficulty in finding a medical practitioner to sign an EPA while they were staying in hospital, but feedback from solicitors revealed that the existing execution requirement was a deterrent to people not in the hospital situation who contemplated making an EPA. Apart from the cost of enlisting a medical practitioner, there were logistical arrangements needed to be made to arrange for both a solicitor and a medical practitioner to be present at the same time to sign an EPA. Mr STOKER further said that in the course of preparing the Consultation Paper, LRC had consulted a number of patient groups on ways to promote public awareness and education on EPAs.

39. Mrs Selina CHOW opined that whilst it was important to simplify the execution process and make the EPA form more user-friendly, efforts should first and foremost be focused on promoting public awareness and understanding of the EPA concept.

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40. The Chairman asked about the projected increase in the take-up rate of EPAs in Hong Kong should the need for a medical practitioner to also sign an EPA be removed. Mr Stuart STOKER replied that LRC had not conducted any projection in this regard. It was hoped that through the combined efforts of simplifying the procedure for making EPAs and stepping up public education and awareness on the concept, the take-up rate of EPAs in Hong Kong would increase significantly to the advantage of the community generally and not just the individual donors.

41. In summing up, the Chairman said that members generally supported abolishing the need for medical certification in the making of EPAs in Hong Kong.

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