

立法會
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LC Paper No. CB(4)602/12-13

(These minutes have been
seen by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Tuesday, 27 November 2012, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex

Members present : Dr Hon Priscilla LEUNG Mei-fun, JP (Chairman)
Hon Dennis KWOK (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Hon CHAN Kin-por, BBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Dr Hon Kenneth CHAN Ka-lok
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, JP
Dr Hon KWOK Ka-ki
Hon Martin LIAO Cheung-kong, JP
Hon TANG Ka-piu
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen

**Member
absent** : Dr Hon Elizabeth QUAT, JP

**Public Officers :
attending** : Item III

The Administration

Mr Arthur HO, JP
Director of Administration and Development
Department of Justice

Ms Josephine CHEUNG
Principal Executive Officer (Special Duties)
Department of Justice

Mrs Sylvia LAM
Project Director/1
Architectural Services Department

Mr WU Chung-kei
Chief Project Manger/102
Architectural Services Department

Mr Jacen LO
Senior Architect/21
Architectural Services Department

Item IV

The Administration

Mr Rimsky YUEN, SC, JP
Secretary for Justice

Mr Frank POON, JP
Solicitor General
Department of Justice

Mr Llewellyn MUI
Senior Assistant Solicitor General
Department of Justice

Hong Kong Bar Association

Mr Kumar RAMANATHAN, SC

Mr Paul SHIEH, SC

The Law Society of Hong Kong

Mr Thomas SO

Chairman of the Constitutional Affairs Committee

Clerk in attendance : Miss Mary SO
Chief Council Secretary (4)2

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Cindy CHAN
Senior Council Secretary (4)2

Ms Rebecca LEE
Council Secretary (4)2

Miss Iris SHEK
Council Secretary (4)5

Ms Mandy WAN
Administrative Assistant (4)1

I. Information paper(s) issued since the last meeting
[LC Paper No. CB(4)186/12-13(01)]

Members noted the referral from the Subcommittee on Legal Aid (Amendment) Regulation 2012, Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2012 and Legal Aid Ordinance - Resolution of the Legislative Council (Commencement) Notice regarding further expansion of the scope of the Supplementary Legal Aid Scheme [LC Paper No. CB(4)186/12-13(01)].

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II. Items for discussion at the next meeting

[LC Paper Nos. CB(4) 181/12-13(01) to (02)]

2. Members agreed to discuss the following items at the next regular meeting scheduled for 14 December 2012 at 10:45 am -

(a) Law Reform Commission's Consultation Paper on Rape and Other Non-consensual Sexual Offences;

(b) Information technology infrastructure for West Kowloon Law Courts Building; and

(c) Proposed amendments to the Arbitration Ordinance (Cap. 609).

3. The Chairman sought members' view on whether the Panel should invite the Hong Kong International Arbitration Centre ("HKIAC") to brief members on the draft Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules ("the draft Rules") at a meeting of the Panel. The draft Rules had been circulated to members vide LC Paper No. 40/12-13(03) on 19 October 2012. As no members indicated the need to invite the HKIAC to brief the Panel on the draft Rules, the Chairman suggested that should members have any views on the draft Rules, the members could convey such views to the Clerk for onwards transmission to the HKIAC. Members agreed.

III. Relocation of the Department of Justice to the Former Central Government Offices (Main and East Wings)

[LC Paper No. CB(4)171/12-13(01)]

4. At the invitation of the Chairman, Senior Architect of the Architectural Services Department ("ArchSD") conducted a powerpoint presentation on the works project for the relocation of part of the offices of the Department of Justice ("DoJ") to the Main Wing and East Wing of the former Central Government Offices ("CGO (Main and East Wings)") in Central, details of which were set out in the DoJ's paper [LC Paper No. CB(4)171/12-13(01)]. Director of Administration and Development of the DoJ ("D of AD") said that subject to members' views, the DoJ planned to submit the proposal to the Public Works Subcommittee ("PWSC") of the Legislative Council ("LegCo") in January 2013 for endorsement and the Finance Committee (FC") of LegCo in February 2013 for approval. The estimated cost of the project was about \$796 million in money-of-the-day prices. Subject to funding approval, the

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conversion works would commence in the second quarter of 2013 for completion in the first quarter of 2015.

Discussion

5. Ms Emily LAU questioned the need of preserving the metal fences in the project site of CGO (Main and East Wings), as there was no metal fence in the site before reunification.

6. D of AD responded that the metal fences in the project site which would not be necessary would be removed, whilst in view of public safety reason for locations which had level difference with adjacent pavement/slope, the fences along the Lower Albert Road would be replaced by a lower fence and the fence along the northern slope facing St John's Cathedral would be maintained. In future, members of the public would be able to access the main entrance of the DoJ from the pavement.

7. Ms Emily LAU urged that a barrier-free environment and adequate female toilets be provided in CGO (Main and East Wings).

8. Project Director ("Project Director/ArchSD") responded that enhancement works would be carried out in CGO (Main and East Wings) to, amongst others, provide a barrier-free environment as well as additional female and disabled toilets in compliance with prevailing statutory requirements.

9. Mr Paul TSE noted from paragraph 5 of the DoJ's paper that the Prosecutions Division would continue to be accommodated at the Queensway Government Offices ("QGO") and some outstation offices in the vicinity of Admiralty would be relocated to the QGO and not to the CGO (Main and East Wings). Mr TSE queried whether the overall provision of space for the DoJ after the relocation of part of the offices to the CGO (Main and East Wings) was overly-generous. According to paragraph 4 of the DoJ's paper, the net usable area of the CGO (Main and East Wings) was about 11 170 square metres ("m²"). According to footnote 2 of the same, the total area currently occupied by the DoJ in the QGO was about 13 000 m² and that in the outstation offices was about 4 700 m², making a total of about 17 700 m². Ms Emily LAU and Mr WONG Yuk-man expressed similar query. Mr WONG further said that an overly-expanded DoJ ran counter to the principle of small government and might also give rise to unreasonable charges brought against innocent persons.

10. D of AD responded that of the 11 170 m² net usable area in the CGO (Main and East Wings), about 10 000 m² would be occupied by existing DoJ offices to be relocated from the QGO. The remaining area of roughly

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1 000 m² in the CGO (Main and East Wings) would be to cater for existing shortfall in the provision of office space for the teams to be relocated and for preserving features with heritage value and existing facilities which would be put to gainful use, such as the conference room on 1/F of the East Wing to be incorporated into the reading corner of the future library. D of AD further said that the DoJ was in discussion with the Government Property Agency on the space requirement in the QGO to accommodate the remaining offices of about 8 000 m², including the Prosecutions Division and some other offices, as well as to cater for existing shortfall in space for the teams which were working in a congested environment. DoJ would exercise due diligence in working out the space requirement.

11. Ms Emily LAU requested the DoJ to provide more detailed information on the space requirements of DoJ in the CGO (Main and East Wings) and in the QGO in its papers to PWSC and FC. D of AD agreed.

12. Mr WONG Yuk-man suggested relocating the outstation offices in the vicinity of Admiralty to the CGO (Main and East Wings) and offices in QGO to stay, so as to reduce the relocation cost, minimize the impact on DoJ's operation and allow other Government departments which were short of space to occupy the CGO (Main and East Wings).

13. D of AD responded that as stated in the 2009-2010 Policy Address, the CGO (Main and East Wings) would be preserved for use by the DoJ after the relocation of the bureaux to the new Central Government Offices at Tamar. In view of the historical significance of the building, the Government considered the relocation of the DoJ to the CGO (Main and East Wings) appropriate. D of AD further said that with the relocation, the offices of the DoJ would be accommodated in the CGO (Main and East Wings) and the QGO, instead of the current situation whereby offices of the DoJ were scattered in the QGO and other different places. This arrangement would help enhance the Department's overall operational and service efficiency. Also, rented office accommodation would be released to achieve rental saving and government-owned office space would be released for use by other government agencies.

14. Ms Emily LAU said that as the Administration had yet to decide on whether or not to redevelop the site of the West Wing of the former CGO ("CGO West Wing"), she hoped that consideration would be given to allocating CGO West Wing for use by the DoJ so as to enable all Divisions of the DoJ to be accommodated under one roof at the CGO to facilitate better operational and service efficiency. Mr Paul TSE and Mr YIU Si-wing expressed similar views. Mr YIU further said that in planning the relocation project, sufficient space should be made available to the DoJ to meet its accommodation need for the

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next five to 10 years. D of AD agreed to convey members' views in respect of the CGO West Wing to the Development Bureau for consideration.

15. In response to Mr YIU Si-wing's enquiry on the energy savings which could be achieved by adopting the various forms of energy efficient measures as set out in paragraph 15 of the DoJ's paper, Project Director/ArchSD said that it was estimated that there would be about 10% energy savings in the annual energy consumption.

16. Mr Michael TIEN enquired about the usable floor area of the CGO West Wing and the cost breakdown of the proposed works project.

17. D of AD responded that the DoJ did not have information on the usable floor area of the CGO West Wing. Regarding the cost breakdown of the proposed works project, Project Director/ArchSD said that she could not provide the information at this stage as the tendering work for the project was still on-going. However, as a very rough estimate, the cost for repair of the existing building and enhancement works for complying with statutory requirements together with the cost for preservation works would comprise about 20% of the estimated cost for the building and building aspects of the project.

Conclusion

18. The Chairman concluded that the Panel had no objection to the DoJ submitting the proposal to the PWSC and the FC. The DoJ was however requested to provide responses to the following issues raised by members at the meeting, i.e. the total office area of the DoJ in the QGO and the CGO (Main and East Wings) after the relocation exercises, justifications for additional space, if any; and breakdown of the costs involved, in its proposal to the PWSC and the FC.

(Post meeting note: Members were informed vide LC Paper No. CB(4)216/12-13 on 6 December 2012 that the Government had issued a press release on 4 December 2012 that the CGO West Wing would be allocated for use by offices of the DoJ and law-related non-governmental organizations.)

IV. Issues arising from the remarks made by Ms Elsie LEUNG Oi-sie at a public forum on 6 October 2012

[LC Paper Nos. CB(4)171/12-13(02), CB(4)180/12-13(01), CB(4)181/12-13(03) to (05) and CB(4)192/12-13(01) to (02)]

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19. Members noted Ms Elsie LEUNG's letter of 20 November 2012 to the Chairman giving her reasons for declining the Panel's invitation to attend a meeting of the Panel to discuss some of her remarks made in her talk to a local education institution on 6 October 2012 regarding the judgements of some cases made by the Hong Kong courts [LC Paper No. CB(4)180/12-13(01)].

20. At the invitation of the Chairman, the Secretary for Justice ("SJ") presented his opening statement in respect of issues arising from the remarks made by Ms Elsie LEUNG at a public forum on 6 October 2012. Specifically, SJ said that he would like to stress or reiterate the following points -

- (a) there were clear provisions in the Basic Law safeguarding the rule of law and judicial independence in Hong Kong, including that of final adjudication. Rights and freedoms of Hong Kong residents and other individuals were safeguarded by the Basic Law and the relevant laws;
- (b) since reunification, the legal and judicial systems of the Hong Kong Special Administrative Region ("HKSAR") had been working well and had continued to develop. Under the framework of the Basic Law, the laws of Hong Kong, including both common law and legislation, had been and would continue to be developing with time. The Civil Justice Reform launched by the Judiciary in 2009, which had brought significant improvements to the legal system of Hong Kong, was a good illustration;
- (c) however, given that the concept of "One country, Two systems" was unprecedented, it was only normal that different views might arise on how "One country, Two systems" should be implemented in various areas. In adjudicating cases involving provisions of the Basic Law, the courts of Hong Kong had recognized that differences in the legal and judicial systems between Hong Kong and the Mainland might lead to different conclusions on the cases;
- (d) considerable discussions had been made recently by the local community in respect of issues concerning the rule of law, judicial independence and the Basic Law. Such discussions were normal since Hong Kong was an open and free society. Nevertheless, he hoped that such discussions could be carried out in a rational, objective and constructive manner to avoid unnecessarily politicizing or polarizing the issues; and

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- (e) as SJ, he pledged on behalf of the HKSAR Government that the HKSAR Government would strive to uphold the rule of law and judicial independence in Hong Kong. At the same time, he hoped that the people of Hong Kong had confidence in the judges and judicial officers of Hong Kong and acknowledged their contributions to Hong Kong all along.

A copy of SJ's opening statement (Chinese version only) was issued to members after the meeting vide LC Paper No. CB(4)194/12-13 on 28 November 2012.

21. At the invitation of the Chairman, Mr Kumar RAMANATHAN presented the views of the Hong Kong Bar Association ("the Bar Association") in respect of issues arising from the remarks made by Ms Elsie LEUNG at a public forum on 6 October 2012 as set out in its submission to the Panel [LC Paper No. CB(4)181/12-13(05)]. Specifically, Mr RAMANATHAN said that -

- (a) whilst the Bar Association respected the right of freedom of expression enjoyed by individuals, it considered that the right of free expression came with responsibility, especially if the speaker was, or was perceived to be, a person carrying special status, influence or authority as what he/she spoke tended to carry the weight of the office he/she took up. The Bar Association did not take the stance that people in high position should not be able to speak out on issues of importance, but one must be careful on what one was talking about, particularly when Hong Kong was going through a phase of constitutional development;
- (b) the Basic Law recognized that Hong Kong's legal system and way of life were different from those of the Mainland, and that recognition went further to provide the Judiciary with independent judicial power, including that of final adjudication. Under Article 158 of the Basic Law, the courts of the HKSAR might, in adjudicating cases, interpret on their own the provisions of the Basic Law within the autonomy of the HKSAR as well as interpret other provisions of the Basic Law. However, if the cases concerned affairs which were the responsibility of the Central People's Government or the relationship between the Central Authority and the HKSAR, the courts of the HKSAR would need to seek an interpretation of the relevant provisions of the Basic Law from the Standing Committee of the National People's Congress ("NPCSC") in making their final judgement. Hence, it had to be viewed with great circumspection if any individual or institution was to insinuate that such independence was not there or that the power of final adjudication

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was to be removed because of their different perception of issues as this could be a slippery road under which the rule of law would be undermined;

- (c) to insinuate that the Bar Association or the courts did not understand the power of the NPCSC to interpret the Basic Law was completely misconceived and wrong. The Bar Association had always subscribed to the views that the NPCSC had the power to interpret the Basic Law. This was also the viewpoint which had been shared by the Judiciary right up to the Court of Final Appeal ("CFA") as well as by the SJ and his Department; and
- (d) the Bar Association appreciated that the Judiciary had withstood various tension and pressure in carrying out its duties in the past 15 years, with the quality and integrity of judges. The Bar Association maintained confidence in the Judiciary that future challenges, as turbulent and difficult as they might be, could still be met by the Judiciary and people of Hong Kong.

22. Mr Thomas SO presented the views of the Law Society of Hong Kong ("Law Society") as set out in its submission to the Panel [LC Paper No. CB(4)192/12-13(02)]. Specifically, Mr SO said that -

- (a) noting the various press reports sparked by the comments made by Ms Elise LEUNG at a public forum on 6 October 2012, the Law Society issued a press release on 10 October 2012 affirming its belief in the independence of the Judiciary enshrined in the Basic Law. In the press release, the Law Society also stated that given the wide public concern about the effects of an interpretation of the Basic Law by the NPCSC on the independence of the Judiciary and the rule of law, the Law Society believed that the Government should act cautiously when considering whether to seek an interpretation of any provisions of the Basic Law; and
- (b) whilst the Law Society would not comment on Ms Elsie LEUNG's letter to the President of the Law Society dated 11 October 2012, the Law Society wished to state that it respected Ms LEUNG's right to exercise her freedom of speech which was a constitutional right enshrined in Article 27 of the Basic Law. However, as the Deputy Director of the Basic Law Committee of the HKSAR, Ms LEUNG's comments at a public forum concerning the Basic Law would inevitably invite speculation on whether these comments represented the views of not only the Committee for the

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Basic Law but also those of the NPCSC. Under Article 158(4) of the Basic Law, the NPCSC "shall consult its Committee for the Basic Law of the HKSAR before giving an interpretation of this Law"; and

- (c) in view of the wide public concerns arising from the speculation, the Law Society considered that it had a duty to reiterate its position on future interpretation of the Basic Law as set out in its press release dated 10 October 2012.

Discussion

23. Mr LEUNG Kwok-hung hoped that Ms Elsie LEUNG could attend a meeting of the Panel to elaborate on her comments made at a public forum on 6 October 2012 that the reason why the CFA had made mistakes in its final judgements on some cases was due to the fact that the CFA did not have sufficient understanding of the relationship between the Central Authorities and the HKSAR. Mr LEUNG questioned whether in making such comments, Ms LEUNG considered that under the principle of "One country, Two systems" the CFA should seek an interpretation of the provisions of the Basic Law with the NPCSC before making its final judgements on the cases.

24. Mr Dennis KWOK said that in his recent article on "豐富一國兩制實踐", Mr ZHANG Xiao-ming, the Deputy Director of the State Council's Hong Kong and Macau Affairs Office, had made the following comments on Article 17 of the Basic Law "要完善對特別行政區立法機關制定的法律的報備審查制度，把全國人大常委會對特別行政區的立法監督權落實好". Mr KWOK pointed out that such comments had caused much concerns amongst the legal sector as well as members of the public that the legislative power of the HKSAR under Article 17 of the Basic Law would be undermined. Mr KWOK asked SJ whether he considered that there was room for improvement in implementing the Article.

25. SJ responded that -

- (a) the legislative power of the HKSAR was made abundantly clear in Article 17 of the Basic Law. By way of illustration, since reunification a total of 551 pieces of legislation enacted by the legislature of the HKSAR were reported to the NPCSC and none of them were returned by the NPCSC; and
- (b) any amendment to Article 17 of the Basic Law must comply with the requirements stipulated in Article 159 of the Basic Law.

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26. Mr Ronny TONG asked whether SJ concurred with Ms Elsie LEUNG's comments that the judges of the HKSAR must understand the relationship between the Central Authorities and the HKSAR in order to make correct judgements on the cases; if not, whether he would openly reject such comments as had been done in his recent open rejection of Mr Alan HOO's remarks that all judges of the HKSAR should be Chinese nationals and/or persons who were permanent residents of the HKSAR.

27. SJ responded that:

- (a) the stance of the Government on the issues arising from the remarks made by Ms Elise LEUNG at a seminar on 6 October 2012 was set out in paragraphs 2, 3 and 5 of the DoJ's paper; and
- (b) as SJ, he would not comment on any remarks made by individuals in Hong Kong unless the contents of such remarks involved contravention of the provisions of the Basic Law.

28. Mr Ronny TONG further asked SJ whether he, as a barrister, personally agreed with the remarks made by Ms Elsie LEUNG that due to insufficient understanding of the CFA on the relationship between the Central Authorities and the HKSAR, wrong final judgements were made by the CFA on some of the cases.

29. SJ responded that as "One country, Two systems" was a new concept, it was only normal that different views might arise on how the concept should be implemented in various areas. SJ reiterated that he would not comment on individuals' remarks, unless the contents of such remarks involved contravention of the provisions of the Basic Law.

30. Mr James TO said that if it was indeed the SJ's determination to safeguard the rule of law and judicial independence, he should openly state his views on Ms Elise LEUNG's remarks.

31. SJ reiterated that he was committed to upholding the rule of law and judicial independence of Hong Kong. Whether he would or would not comment on an individual's remarks on the legal and judicial systems of Hong Kong would not affect his and the Government's commitment in this regard. SJ further reiterated that he would not comment on individual's comments unless the content of such contravened the Basic Law. SJ hoped that the public had confidence in the judges of the HKSAR in exercising their judicial power independently, and the independence of judges was well safeguarded through many mechanisms, including the well-established mechanism of appointing

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judges. Since reunification, the legal and judicial systems of the HKSAR had been working well and would continue to develop.

32. Mr Alan LEONG said that he shared the views of the Bar Association that it was necessary for Hong Kong to speak up in the first instance against any act which attempted or sought to undermine the rule of law and judicial independence safeguarded by the Basic Law. Mr LEONG further said that the Civic Party did not agree with the reasons given by Ms Elsie LEUNG in her letter of 20 November 2012 to the Panel Chairman for not attending this meeting in which Ms LEUNG stated that everyone in Hong Kong was entitled to his/her views and inviting her to the Panel meeting because some Panel members took issue with what she said might create a dangerous precedent for turning the Panel meeting into a McCarthy hearing. The Civic Party considered such a comparison totally inappropriate in that McCarthy hearings were held in the United States of America in the 1950s to clamp down on people for being a Communist which might result in loss of employment or even imprisonment, which was not the case for Panel meetings to elicit exchange of views on issues of wide public concern. Although Ms Elsie LEUNG was entitled to her own views on the rule of law and judicial independence, members of the Panel also had the right to seek clarification from Ms LEUNG given her status and office. The Civic Party was regrettable that Ms LEUNG had chosen not to come before the Panel to explain the remarks she made on the judges of the HKSAR at a public forum on 6 October 2012. For the "One country, Two systems" to succeed in Hong Kong, the Civic Party considered that it was necessary for people with powers to exercise their powers with self-restraint.

33. The Chairman said that she had openly said that the purpose of this meeting was not for interrogating, but to provide an opportunity for parties concerned to exchange views and seek clarifications on issues of wide public concern. Such an arrangement was common to Panel meetings.

34. Ms Emily LAU said that the reason for the Panel to invite Ms Elsie LEUNG to attend the meeting was because Ms LEUNG had made some alarming remarks at a public forum on 6 October 2012 which some members of the Panel considered would undermine "One country, Two systems" and the core values of Hong Kong. Ms LAU expressed regret that Ms LEUNG had chosen not to attend the meeting. Ms LAU hoped that she could meet Ms LEUNG in a not too distant future and tell her directly how the Democratic Party and many people felt threatened by her remarks given her status and office.

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35. Ms Emily LAU noted that it was stated in the last part of paragraph 5 of the Bar Association's submission that "any public act which undermines the authority of the Hong Kong Judiciary is likely to be perceived to be a threat to the rule of law and the independence of the Judiciary, even if the public act is otherwise permitted by the law". Ms LAU asked whether the Bar Association considered that the remarks about the judges made by Ms Elsie LEUNG was a threat to the rule of law and the independence of the Judiciary.

36. Mr Kumar RAMANATHAN responded that the public act referred to in paragraph 5 of the Bar Association's submission was not any specific act as such. The point the Bar Association was trying to make was that even if a person in his/her belief that he/she was exercising his/her right of free speech, but because his/her speech carried much more weight than that of the ordinary citizens on the street due to the position he/she held, it was to be regretted if his/her speech could be interpreted as undermining the rule of law and judicial independence.

37. Mr Kumar RAMANATHAN further said that the judges could only decide cases on the materials placed before the court, but could not go behind the court and search what the system in the Mainland was when adjudicating cases. The responsibility rested with the parties to place the evidence, in legally admissible form, before the judges for adjudicating cases, and the public in Hong Kong were accustomed to, and were justifiably confident in such a system.

38. Ms Emily LAU referred members to paragraph 9 of Ms Elise LEUNG's submission attached to her letter to the Panel Chairman in which Ms LEUNG stated that she did not know what gave Mr Justice BOKHARY the cause of alarm for saying "Clouds heralding a storm of unprecedented ferocity are gathering over the rule of law in Hong Kong". Ms LAU asked the Bar Association and the Law Society whether they concurred with Mr Justice BOKHARY.

39. Mr Kumar RAMANATHAN responded that the Bar Association did not wish to comment on the remarks given by Mr Justice BOKHARY nor the views of Ms Elsie LEUNG on Mr Justice BOKHARY's remarks. It was best left to the public to decide who was right or wrong. As a professional body, the Bar Association only looked at statements made in general to see what impact they had in terms of the rule of law and judicial independence.

40. Mr Thomas SO responded that the Law Society was not in a position to comment on individuals' comments on the rule of law and judicial independence.

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41. Mr Albert HO expressed regret that Ms LEUNG chose not to come and elaborate her comments and views before the Panel. Mr HO said that an act of openly criticizing the legal profession, including the judges, for not having a good understanding of the constitutional relationship between the Mainland and the HKSAR would further undermine public confidence in the independence of the Judiciary. The fact that the HKSAR government had chosen to seek from the NPCSC an interpretation of the Basic Law after a ruling was made by the CFA in the Ng Kar Ling case had aroused great concern of the local community and wavered confidence of the overseas community as to whether the Hong Kong courts would be able to continue to exercise its judicial power free of interference. In relation to the problem of children born in Hong Kong to non-Hong Kong residents, views had been expressed by the legal sector and local community that the issue could be dealt with through seeking an amendment to the relevant provisions in the Basic Law. On this issue, Ms LEUNG was reported to have stated her preferred solution was for the HKSAR government to report to the State Council for the purpose of seeking an interpretation of the Basic Law by the NPCSC. Being the Deputy Director of the Committee for the Basic Law of the HKSAR, Ms LEUNG's remarks would undoubtedly spark the speculation that her comments reflected the views of the NPCSC.

42. Mr TAM Yiu-chung said that he did not see the need for inviting Ms Elsie LEUNG to attend the meeting and he respected Ms LEUNG's decision of not coming to the meeting. Mr TAM further said that he saw no grounds to accuse Ms LEUNG for undermining the rule of law and judicial independence of Hong Kong by virtue of some of the remarks she made about judges during a talk at a local education institution on 6 October 2012 for the following reasons -

- (a) Ms LEUNG was entitled to her views like anyone else in Hong Kong;
- (b) as made clear in Ms LEUNG's submission, the remarks she made about judges at a talk at a local education institution on 6 October 2012 were not directed towards criticism of the courts or judges but were meant to give a balanced presentation of the legal challenges faced by the HKSAR since reunification. Furthermore, her criticisms of some of the judgements made by the courts were not directed towards putting pressure on any judge or in respect of any proceedings before the court;
- (c) although Ms LEUNG was the Deputy Director of the Basic Law Committee of the HKSAR, this did not mean that her remarks about judges made at a talk on 6 October 2012 represented the

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views of the Basic Law Committee nor her remarks involving the Basic Law could influence the Judiciary. The Basic Law Committee was an advisory body and it would only give advice on the Basic Law upon the request of the NPCSC. Furthermore, the remarks of the NPCSC, in the absence of a formal interpretation under Article 158 of the Basic Law, would be totally ignored by the CFA as in the Chong Fung Yuen case; and

- (d) many judges, including Mr Justice BOKHARY, had openly expressed in the past that they would not let outside remarks influence them in adjudicating cases.

43. Mr Martin LIAO was of the view that the remarks made by Ms Elsie LEUNG at a local education institution on 6 October 2012 did not amount to an interference of judicial independence. Mr LIAO welcomed the statement made by Mr Justice BOKHARY that Hong Kong was a free society and anyone was entitled to his/her own views and the freedom of speech and other members of the society were free to agree or to disagree. The Bar Association had also stated in paragraph 7 of its submission that it did not in any way seek to limit or restrict the freedom of expression of any person.

44. Mr Martin LIAO further said that in the CFA's judgement on the Lau Kong Yung case in 1999, the CFA held that the power of the NPCSC to interpret the Basic Law, which was a power derived from the Constitution of the People's Republic of China, was plenary and not limited by Article 158(2) and (3) of the Basic Law and that the NPCSC could invoke such power to interpret any provision of the Basic Law in the absence of pending litigation. Mr LIAO asked the Law Society whether it agreed that such judgement was a part of the law of Hong Kong and whether it considered such judgement had impaired independence of the Judiciary.

45. Mr Thomas SO responded that as Hong Kong practiced common law, any judgement of the CFA would become a part of the law of Hong Kong. Mr SO further said that the Law Society had on more than one occasion openly stated that it accepted the CFA's judgement on the Lau Kong Yung case.

46. Ms Starry LEE shared the views of Mr TAM Yiu-chung and Mr Martin LIAO that it was not necessary to invite Ms Elsie LEUNG to attend the meeting to discuss her remarks made at a talk at a local education institution on 6 October 2012. Ms LEE pointed out that although Ms LEUNG declined the Panel's invitation to attend the meeting, she had offered in her letter to the Panel Chairman to meet with individual members at a mutually agreeable time to exchange views over issues of common concern. Ms LEE further said that it

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was questionable whether the Panel meeting was an appropriate venue for discussing an individual's remarks, having regard to the fact that the focus of the work of the Panel was to monitor the work of the Government on administration of justice and legal services.

47. Mr Michael TIEN said that if Ms Elsie LEUNG chose not to attend the meeting, her decision should be respected. Mr TIEN further said that he was not in a position to comment whether under the "One Country Two Systems", Hong Kong judges needed to consider the Mainland-Hong Kong relationship when adjudicating cases or whether under the principle of judicial independence, they should simply refer to the law and the legislation in Hong Kong in carrying out their duties. Noting the remarks made in Ms LEUNG's submission to the Panel Chairman that "in the absence of a formal interpretation of the Basic Law under Article 158... how could the remarks of a member of the HK Basic Law Committee... influence the courts of Hong Kong", Mr TIEN then asked the Bar Association whether it believed that the courts would be influenced by Ms LEUNG's remarks in their future judgements.

48. Mr Kumar RAMANATHAN responded that the Bar Association had not stated that Ms Elsie LEUNG's remarks would influence the courts. What the Bar Association was trying to say was that such remarks coming from a person of certain authority could be perceived as an attempt to interfere with judicial independence.

49. Mr NG Leung-sing cautioned that the practice of inviting individuals who had close ties with the Mainland to attend Panel meetings to explain their remarks might give rise to a chilling effect on people to express their views, which was against the freedom of speech accorded to Hong Kong residents under Article 27 of the Basic Law.

50. Mr Paul TSE asked the Bar Association to comment on the following two remarks in terms of the rule of law and judicial independence, i.e. Ms Elsie LEUNG's remarks made at a talk at a local education institution on 6 October 2012 about the judges and Mr WONG Yuk-man's remarks made on several occasions in the public that he and others were wrongly prosecuted by the court for illegal assembly and obstruction of public place during a demonstration in the Central District on 1 July 2011.

51. Mr Kumar RAMANATHAN responded that it was not appropriate to make a comparison between the two remarks, as it was one thing for someone who held a very high position in the society and carried with him/her real power and considerable influence to make an open statement which suggested that the Judiciary was out of touch with the law they had been tasked to administer, and

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another thing if someone made an open statement which suggested that he/she was wrongly prosecuted by the court. Mr RAMANATHAN further said that the reason why the Bar Association issued two open statements in response to the remarks made by Ms Elsie LEUNG at a public seminar on 6 October 2012 was to assist the public in understanding the debate that was taking place.

52. Mr WONG Yuk-man expressed regret that although the power of interpretation of the NPCSC and the independent judicial power of the Hong Kong courts were provided for in the Basic Law under the "One Country Two Systems", a total of five interpretations of the Basic Law had been made in the past 15 years where only one was initiated by the CFA, the others being initiated by the HKSAR government or the NPCSC.

53. Mr CHAN Kin-por pointed out that there was a well established system for appointment of judges which provided them with security of tenure of office. He personally had confidence in the integrity of judges and judicial officers of Hong Kong and was convinced that Hong Kong judges would continue to carry out their duties under the requirements of the Basic Law.

54. Dr Anne CHIANG said that she did not see any need for Ms Elsie LEUNG to come before the Panel and answer questions on her remarks. In her view, regardless of the status and office held by an individual, his/her right of free speech should be respected. If restrictions were to be put on individuals discriminately, it would seem to her that discussions on issues concerning the system of justice in Hong Kong were not genuinely accessible to the public. To her understanding, the law was itself continuously evolving with societal development and there were bound to be on-going discussions and exchange of views. She stressed that an open, rational and constructive debate was necessary and conducive to the development of the law and the judicial system in Hong Kong and the debate could take place at venues other than the Legislative Council.

55. Mr Kumar RAMANATHAN responded that there was nothing wrong to have an open debate about the quality and system of justice in Hong Kong. It was recognized that no system of justice was perfect and the law was to undergo continual changes to meet the challenges of the day. That was why the Judiciary had implemented in 2009 the Civil Justice Reform for the improvement of the civil justice system. He however cautioned that the legal system of Hong Kong was to continue for 50 years as enshrined in the Basic Law.

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56. Mr LEUNG Kwok-hung disagreed with Dr Anne CHIANG that inviting Ms Elsie LEUNG to the meeting should not be taken to mean that Ms LEUNG's freedom of speech was undermined.

57. Mr Paul TSE said that as the Basic Law was different from the common law, the legal profession, including the judges, could not interpret the provisions in the Basic Law according to the common law only without regard to the legal system and the Constitution of the People's Republic of China. He pointed out that the NPCSC's interpretation of the Basic Law in 1999 had indeed helped clarify the meaning of the relevant provisions in the Basic Law.

58. Mr Ronny TONG asked SJ whether he agreed that freedom of speech did not mean one could say anything with no legal consequences, as proven by the Wong Yeung Ng case in which the defendant was found guilty of contempt of court for scandalizing the court and the judge and was penalized.

59. SJ responded that hitherto he had not heard or received any criticism suggesting that Ms Elsie LEUNG's remarks constituted defamation or contempt of court, or that Ms LEUNG's remarks had breached the law or exceeded the limits to freedom of expression.

60. Mr Dennis KWOK said that the reason for the Panel to invite Ms Elise LEUNG to the meeting was to have an open discussion on her remarks which had aroused great concern over the rule of law and judicial independence in Hong Kong not only locally but overseas. Mr KWOK further said that if such concern was left unaddressed, the reputation of Hong Kong as an international city with independent judiciary would be undermined.

Conclusion

61. The Chairman thanked SJ and representatives of the Bar Association and the Law Society for attending the meeting to exchange their views with members.

62. There being no other business, the meeting ended at 6:45 pm.

Council Business Division 4
Legislative Council Secretariat
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