

**立法會**  
***Legislative Council***

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LC Paper No. CB(4)247/13-14  
(These minutes have been seen  
by the Administration)

**Panel on Administration of Justice and Legal Services**

**Minutes of meeting**  
**held on Tuesday, 25 June 2013, at 4:30 pm**  
**in Conference Room 1 of the Legislative Council Complex**

**Members present** : Dr Hon Priscilla LEUNG Mei-fun, JP (Chairman)  
Hon Dennis KWOK (Deputy Chairman)  
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 Michael TIEN Puk-sun, BBS, JP  
Hon NG Leung-sing, SBS, JP  
Hon YIU Si-wing  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK  
Dr Hon Kenneth CHAN Ka-lok  
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 :** Hon Albert HO Chun-yan  
Hon Steven HO Chun-yin  
Hon Kenneth LEUNG  
Dr Hon Elizabeth QUAT, JP

**Public officers attending :** Agenda item III

Law Reform Commission of Hong Kong

Mr Rimsky YUEN, SC, JP  
Secretary for Justice and  
Chairman, The Law Reform Commission of Hong  
Kong

Mr Stephen WONG  
Secretary, The Law Reform Commission of Hong  
Kong

Agenda item IV

Ms Gracie FOO, JP  
Deputy Secretary for Home Affairs (1)

Ms Aubrey FUNG  
Principal Assistant Secretary for Home Affairs  
(Civic Affairs) 2

Mr Thomas Edward KWONG  
Deputy Director of Legal Aid (Application &  
Processing)

Mr Chris CHONG  
Assistant Director of Legal Aid (Application &  
Processing)

**Attendance by  
Invitation**

: Agenda item IV

**Legal Aid Services Council**

Dr Eric LI Ka-cheung  
Chairman

Dr Witman HUNG Wai-man  
Member

Ms Virginia CHOI Wai-kam  
Member

Mr Karon WAN  
Principal, Deloitte Consulting (Hong Kong)  
Limited

**Society for Community Organization**

Mr Richard TSOI Yiu-cheong  
Community Organizer

**The Law Society of Hong Kong**

Mr Leslie YEUNG Kwok-leung  
Legal Aid Committee of the Law Society

Mr FOK Wing-kuen  
Assistant Director of Practitioner Affairs

**Legal Aid Counsel Association**

Mr Nelson KWOK Ka-sing  
Chairman of Legal Aid Counsel Association

**Hong Kong Bar Association**

Mr Nicholas PIRIE

Mr Raymond LEUNG

Mr Valentine YIM

**Hong Kong Confederation of Trade Unions**

Mr POON Man-hon  
Policy Researcher

**Clerk in attendance** : Ms YUE Tin-po  
Chief Council Secretary (4)3

**Staff in attendance** : Mr Timothy TSO  
Assistant Legal Adviser 2

Ms Rebecca LEE  
Council Secretary (4)2

Miss Mandy LAM  
Legislative Assistant (4)2

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Action

**I. Information paper issued since the last meeting**

(LC Paper No. CB(4)766/12-13(01) -- Paper entitled "Proposed Amendments to the Official Administrator's Accounts (Interest) Rules" provided by the Judiciary Administration)

Members noted that the above paper had been issued since the last meeting.

**II. Date of next meeting and items for discussion**

(LC Paper No. CB(4)794/12-13(01) -- List of outstanding items for discussion

LC Paper No. CB(4)794/12-13(02) -- List of follow-up actions)

2. Members were informed that the next regular Panel meeting originally scheduled for 23 July 2013 was rescheduled to 11 July 2013. Should the Council meeting of 10 July 2013 continue at 2:30 pm on the

following day, i.e. 11 July, the Panel meeting would be held at 4:30 pm on 23 July 2013.

3. Members agreed to discuss the following items at the next regular meeting scheduled for 11 July 2013 at 4:30 pm -

- (a) Administration of Justice (Miscellaneous Provisions) Bill; and
- (b) Mechanism for handling complaints against judicial conduct.

*(Post-meeting note: Since the Council meeting of 10 July 2013 continued on 11 July 2013, the next regular meeting was re-scheduled to 23 July 2013.)*

4. Members noted that the item on judicial manpower situation at various levels of court and long court waiting times was not ready for discussion. Members agreed that the item should be deferred to a future meeting.

### **III. Implementation of the recommendations made by the Law Reform Commission**

(LC Paper No. CB(4)794/12-13(03) -- Paper on implementation of the recommendations made by the Law Reform Commission)

#### Presentation by the Law Reform Commission

5. At the invitation of the Chairman, the Secretary for Justice ("SJ") and Chairman of the Law Reform Commission of Hong Kong ("LRC") briefed members on the progress of the Administration's implementation of the recommendations made by the LRC. Details of the briefing were set out in the LRC Secretariat's paper (LC Paper No. CB(4)794/12-13(03)).

6. SJ advised that of the 61 LRC reports as mentioned in the table annexed to the Secretariat's paper (LC Paper No. CB(4)794/12-13(03)), one recommended no reform, three were rejected by the Administration and two indicated that the Administration was inclined not to pursue the recommendations at this juncture. While five reports had partly been implemented by the Administration, 33 reports had been implemented in full mostly by legislative means. The overall implementation rate was in the region of 62%. Although there were 17 reports which remained not

implemented, these reports met with constructive feedback from the Administration, mostly with an expression of an intention to take forward the LRC's recommendations or implement them in modified form, including working out details of the legislative proposals within the next two to three years.

## Discussion

### *Progress of implementation*

7. Mr WONG Yuk-man and Mr LEUNG Kwok-hung enquired about the number of LRC reports that were accepted by the Administration but were rejected by the Legislative Council ("LegCo"). SJ replied that only the LRC report on extrinsic materials as an aid to statutory interpretation was lapsed due to the opposition by the LegCo Bills Committee and The Hong Kong Bar Association ("Bar Association") and there was suggestion to wait and see how this area of law might develop. The Department of Justice ("DoJ") was reviewing the developments and considering the way forward, in collaboration with the LRC's Secretariat's further research as well as responses from the relevant stakeholders on the subject. A letter had also been sent to the Bar Association to follow up on the matter.

8. Noting that the LRC's remit was to consider for reform those aspects of the law which were referred to it by the SJ or the Chief Justice, Mr WONG Yuk-man opined that the LRC failed to perform its function independently as its work had been interfered by the Government. He considered that the LegCo, being the legislature as well as an organization representing public opinions, should have the same right to refer those aspects of the law to the LRC for study. Mr WONG also opined that the Administration had spent a long time in considering the LRC's recommendations on various projects, such as the LRC Report on Stalking which was discussed since October 2000. He was worried that the LRC's recommendations would become out of date due to the lapse of time.

9. SJ responded that the LRC was not the only source of proposals for reform of the law in Hong Kong. Proposals for reform could also be generated by the Government bureaux and departments, the LegCo, the academic sector and/or the public. SJ added that the LRC had followed up concerns on expediting the implementation process and conducted some informal consultations on this subject. However, there were some factors contributing to the slow progress made by the Administration in implementing the recommendations which were beyond the LRC's control.

10. Mr WONG Yuk-man said that he had expressed concern earlier at the meeting of the Panel on Security about sexual offences records checks for child-related work which, in his opinion, should be implemented by way of legislative measures instead of an administrative scheme. Although the Administration had been urged to introduce a bill to commence the legislative process, it had yet to come up with any legislative proposal since the implementation of the administrative scheme by the Security Bureau in 2011. He was worried that the Administration might use administrative measures to implement the LRC's recommendations in order to bypass the necessary legislative procedures.

*Resources and the work of the Law Reform Commission*

11. Noting that the present composition of the LRC comprised prominent members of the community including legal professionals on a volunteer basis, Mr Dennis KWOK enquired whether SJ would consider seeking funding to enhance the manpower resources and the working efficiency of the LRC. Citing an example that there were five full-time lawyers and a group of experienced law draftsmen serving the law reform agency in the United Kingdom, Mr KWOK called for more full-time staff to support the work of the LRC.

12. Ms Cyd HO declared that she was a member of the Archives Action Group. She recalled that the LegCo Members were informed at a Council meeting in early June 2013 that the LRC had established two sub-committees to consider the topics of the Archives Law and access to information respectively. However, such information was not uploaded onto the LRC's website for public viewing on the day of announcement. She opined that the LRC's resources were far from adequate and that the lack of such resources might prolong the consultation process and the study of legislative proposals. In this connection, Ms HO enquired whether relevant stakeholders would be involved during preparation process of the consultation paper for the two aforesaid topics.

13. In response, SJ advised that since he took office on 1 July 2012, he had discussed with various parties the resources and the efficiency of the LRC with a view to formulating measures to expedite the LRC's work. SJ further advised that a member of the Archives Action Group, who was also an expert from the University of Hong Kong, had been appointed as a member of the LRC's sub-committee on Archives Law. Other members of the two sub-committees included barrister, lawyers and other prominent members of the community. Representatives from the relevant Government bureau and department were also invited to join the two sub-committees so that any policy issues in relation to the implementation of the proposals could

be discussed at an early stage. This was one of the measures taken to expedite the LRC's work.

14. Given the Archives Law and access to information were closely linked to each other, Ms Cyd HO queried why the two topics were not studied together under one sub-committee. SJ explained that taken into account the practice of the other common law jurisdictions and detailed deliberations among the LRC members, the LRC had decided to conduct the relevant studies by two separate sub-committees. Having considered the close inter-relationship between Archives Law and access to information, SJ advised that he had conveyed a message to the chairmen of the two sub-committees that they might combine the two sub-committees into one if they considered it necessary to do so in future.

15. Noting that the DoJ had established a cross-sector Working Group to study and consider the proposals of the LRC report on Class actions, the Chairman enquired about the progress of the relevant work. In response, SJ said that Class action was a controversial issue which received diversified views from different sectors of the community. There were discussions about whether a class action regime should be adopted in Hong Kong in full-scale and whether the regime should be extended to other cases in the event of successful litigation in a consumer case. There was also concern about whether class action would lead to litigation abuse. SJ supplemented that there had been quite a lot of class action litigations in the United States ("US") in the past. Judges as well as legal experts in the US were now concerned about litigation abuse and were strived to look for preventive measures. Recently, Singapore had considered introducing class action in its legal system but finally decided not to proceed. To consider the way forward, the Administration would continue to gauge views from different parties and consider preventive measures to avoid litigation abuse if class action regime was to be adopted in Hong Kong.

LRC  
Secretariat

16. At the request of Mr WONG Yuk-man, the LRC Secretariat would enhance the presentation format of the table annexed to its paper by grouping the items into categories for easier understanding and to facilitate discussion at future Panel meetings.



**IV. Establishment of an independent legal aid authority**

Meeting with the Law Reform Commission and deputations/individuals

*(issued by Deloitte Consulting (Hong Kong) Limited in March 2013* -- Final Report of the consultancy study on the feasibility and desirability of establishing an independent legal aid authority (English version only)

LC Paper No. CB(4)747/12-13(03) -- Executive summary of the report of the consultancy study on the feasibility and desirability of establishing an independent legal aid authority issued in March 2013 (English version only)

LC Paper No. CB(4)747/12-13(02) -- Letter from the Legal Aid Services Council to the Chief Executive dated 30 April 2013 on independence of legal aid (English version only)

LC Paper No. CB(4)747/12-13(01) -- Letter from the Legal Aid Services Council to the Chief Executive dated 27 May 2013 on independence of legal aid (English version only)

LC Paper No. CB(4)794/12-13(04) -- Updated background brief on the establishment of an independent legal aid authority prepared by the Legislative Council Secretariat)

Welcoming remarks by the Chairman

17. The Chairman welcomed representatives of the Legal Aid Services Council ("LASC") and deputations to the meeting. She said that written submissions from deputations and individuals received before the meeting had been circulated to members, and deputations and individuals which had not provided written submission were requested to do so as soon as possible after the meeting. She reminded the deputations and individuals that when addressing the Panel at the meeting, they were not covered by the protection and immunity under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), and their written submissions were not covered by the said Ordinance.

Presentation by the LASC

18. At the invitation of the Chairman, Dr Eric LI Ka-cheung, Chairman of LASC briefed members on the findings of the consultancy study on the feasibility and desirability of establishing an independent legal aid authority ("the consultancy study") and the recommendations of LASC on the issue. Mr Karon WAN, Principal, Deloitte Consulting (Hong Kong) Limited then briefed members on the methodology used in the consultancy study. Details of the briefings were set out in the LASC's letter to the Chief Executive dated 30 April 2013 and the Final Report of the consultancy study.

Presentation by deputations

*Society for Community Organization*

19. Mr Richard TSOI Yiu-cheong of the Society for Community Organization ("SOCO") expressed disappointment that the LASC had ruled out the imminent need for an independent legal aid authority. He said that although SOCO recognized the work of the Legal Aid Department ("LAD") in general, the institutional arrangement of LAD being a government department had created a perception of lack of independence and was retrogressing, as evidenced by the transfer of the legal aid portfolio from the Administration Wing of the Chief Secretary for Administration's Office ("Administration Wing") to the Home Affairs Bureau ("HAB") in 2007. Moreover, the refusal of LAD to grant legal aid to applicants in genuine need had further aggravated the perception of lack of independence.

*Hong Kong Bar Association*

(LC Paper No. CB(4)830/12-13(01) -- Submission (*English version only*))

20. Mr Nicholas PIRIE of the Hong Kong Bar Association ("Bar Association") said that the Bar Association took the view that the consultant's recommendations should be withdrawn, and that new recommendations should be made to the Chief Executive for the establishment of an independent legal aid authority so that preparation work could begin without further delay.

*The Law Society of Hong Kong*

(LC Paper No. CB(4)794/12-13(05) -- Submission (*English version only*))

21. Mr Leslie YEUNG Kwok-leung of the Legal Aid Committee of the Law Society of Hong Kong ("Law Society") presented the views of the Law Society as detailed in its submission. He said that the Law Society fully supported the position of the Bar Association on the need for an independent legal aid authority.

*Legal Aid Counsel Association*

22. Mr Nelson KWOK Ka-sing of the Legal Aid Counsel Association ("LACA") said that the views of LACA's members were more or less equally divided on the need for an independent legal aid authority. As regards the recommendations of the consultancy study, LACA only agreed with the recommendation that LAD should be re-positioned and directly accountable to the Chief Secretary for Administration, which was its former position prior to 2007. LACA did not agree with the rest of the recommendations of the consultancy study.

*Hong Kong Confederation of Trade Unions*

23. Mr POON Man-hon of Hong Kong Confederation of Trade Unions ("HKCTU") said that HKCTU supported the establishment of an independent legal aid authority as the existing institutional arrangement had made LAD susceptible to interference from the Executive authorities. HKCTU also proposed to reform the legal aid system by abolishing the means test for applicants seeking wage arrears or severance payments from their employers.

Presentation by the Administration

24. Deputy Secretary for Home Affairs (1) ("DSHA(1)") advised that the Administration would consider the findings and recommendations of the consultancy study in tandem with the views expressed by the deputations and Panel members at the meeting in drawing up its conclusion on the way forward. She said that all along, the Government's policy objective was to ensure that no one with reasonable grounds for pursuing or defending a legal action was denied access to justice because of a lack of means. The statutory means and merits tests had been the only criteria provided by the Legal Aid Ordinance (LAO) in assessing legal aid applications, which were not affected by financial constraints. Notwithstanding LAD's status as a Government department, sufficient safeguards in statute and in practice were in place to ensure the operational independence of LAD. A statutory appeal mechanism against LAD's decisions was vested with the Registrar of the High Court, whose decision should be final. Hence, from an institutional point of view, LAD was operating independently with sufficient check and balance exercised by the Judiciary.

Discussion

*Institutional arrangement*

25. Mr LEE Cheuk-yan and Mr Ronny TONG expressed grave disappointment that LASC had agreed with the consultant's conclusion that there was no immediate need to establish an independent legal aid authority, despite long standing calls from Panel members and the two legal professional bodies for the setting up of an independent legal aid body to administer legal aid in place of LAD. They echoed the position of the two legal professional bodies on the importance of establishing an independent legal aid authority to ensure that the provision of legal aid services was free from any perception of conflict of interest and undue influence from the Government.

26. Mr Dennis KWOK considered it a waste of taxpayers' money for the LASC to spend a hefty \$3 million for commissioning the consultancy study. He expressed dissatisfaction that the LASC had relied heavily on the study and adopted the consultant's recommendations without its own independent judgment. Mr LEUNG Kwok-hung said that institutional independence had been undermined when LAD's administration was transferred to HAB in 2007. Mr Martin LIAO disagreed with the consultant's view that an independent legal aid authority would be subject to even more political pressure in the decision-making process.

LASC

27. Dr Eric LI Ka-cheung, Chairman of LASC advised that whilst LASC did not consider that there was an immediate need to establish an independent legal aid authority, LASC considered that its functions to oversee the delivery of quality legal aid services should be enhanced to strengthen the governance and operational transparency of the LAD with a view to enhancing public confidence in the rule of law in Hong Kong. He added that the LASC agreed with the consultancy study that the problem of lack of perceived independence, which was more of an issue among different stakeholder groups, could be addressed by remedial measures without having to modify the existing institutional arrangement. The improvement measures recommended would not cause any review of professional judgment in individual cases. If the measures were implemented, more communication with the Legal Aid Counsel was considered necessary to ease their concern. Notwithstanding the above, the LASC would reconsider the independence issue from time to time. At Mr Dennis KWOK's request, the LASC undertook to provide a copy of the consultancy brief issued to Deloitte Consulting (Hong Kong) Limited about the commissioning of the consultancy study.

*(Post-meeting note: The information provided by the LASC was circulated to members vide LC Paper No. CB(4)891/12-13(01) on 12 July 2013.)*

28. Mr CHAN Kam-lam and Dr CHIANG Lai-wan said that they did not see the need for establishing an independent legal aid authority. Mr CHAN considered that as the existing arrangement had worked well for years, the Government should maintain the status quo. Dr CHIANG opined that according to the findings of the consultancy study, no substantiated example of Government interference on legal aid administration had been identified. On the contrary, there were ample examples of legal aid being granted to cases against the Hong Kong Government which involved huge amount of resources per case, such as the right of abode case of Ng Kar-ling whereby more than \$40 million were spent on legal aid.

Admin

29. DSHA(1) advised that the majority of stakeholder groups which participated in the survey conducted by the consultant were generally more concerned about the quality of the legal aid services rather than the independence issue. The problem of lack of perceived independence could be better addressed by introducing improvement measures without having to fundamentally change the LAD's institutional structure. At Mr CHAN Kam-lam's request, the Administration undertook to provide the actual expenditure involved in the judicial review case of Hong Kong-Zhuhai-Macao Bridge.

*Financial arrangement*

30. In response to Mr Dennis KWOK's enquiry about the Bar Association's view on the budget of LAD, Mr Nicholas PIRIE of the Bar Association opined that the "uncapped budget" was a myth in that the Administration had never sought supplementary provision from the Finance Committee and had maintained a stable trend in expenditure. In this regard, the Chairman urged the Administration to clarify whether the LAD's budget was capped.

Admin

31. DSHA(1) explained that Hong Kong's legal aid funding mechanism was recognized as one of the leading practices in the world as the provision of legal aid service would not be hindered by LAD's fiscal position. Under the present institutional and operational framework, an application for legal aid that had passed both the means and merits tests would not be refused due to insufficient legal aid funding, and LAD officers needed not be concerned with the financial provisions of the Department when processing applications. When the costs exceeded the approved provisions within a financial year, supplementary provision would be sought according to established mechanism to cover the legal aid cost arising from legal aid cases to ensure that no eligible legal aid applications would be turned down. The mechanism was workable for LAD as a Government department. At Ms Emily LAU's request, the Administration undertook to provide a response to the views expressed by the Bar Association on the budget issue, including how sufficient budget for the provision of legal aid services was always provided.

32. In view that the legal professional bodies and some deputations urged for the establishment of an independent legal aid authority though they understood that a financial cap would be put on legal aid budget, Dr Eric LI Ka-cheung, Chairman of LASC advised the Panel to consider seriously the implication of a capped budget for legal aid and whether this was for the benefit of members of the public in their quest for access to justice. He also pointed out that the establishment of an independent legal aid authority might mean some sacrifices would have to be made in the provision of services in order to work out an affordable budget with reference to the experience overseas.

*Expanding the scope of legal aid schemes*

33. Noting the rising numbers of unrepresented litigants in civil and criminal proceedings at all levels of courts, Mr Dennis KWOK urged the Administration to expedite its review on further expanding the scope of the Ordinary Legal Aid Scheme ("OLAS") and the SLAS.

34. DSHA(1) advised that the Administration would continue its review on further expanding the scope of the OLAS and the SLAS as an on-going exercise. Meanwhile, the Administration had launched in March 2013 a two-year pilot scheme to provide legal advice for litigants in person ("the LIPs Scheme"). The LIPs Scheme aimed to assist LIPs in the form of procedural advice relating to court proceedings. A Steering Committee on the Provision of Legal Advice for LIPs chaired by Hon Justice Pang Kin-kee had been set up to oversee and advise on the operation of the LIP Scheme. Up to the end of May 2013, about 200 LIPs had been assisted under the LIP Scheme. The Steering Committee would advise on the way forward in the light of operational experience of the pilot scheme.

**V. Any other business**

35. There being no other business, the meeting ended at 7:15 pm.