

**立法會**  
**Legislative Council**

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LC Paper No. CB(4)1563/16-17  
(These minutes have been seen  
by the Administration)

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

**Minutes of meeting**  
**held on Monday, 27 March 2017, at 4:30 pm**  
**in Conference Room 2 of the Legislative Council Complex**

**Members present** : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)  
Hon Dennis KWOK Wing-hang (Deputy Chairman)  
Hon James TO Kun-sun  
Hon Paul TSE Wai-chun, JP  
Hon LEUNG Kwok-hung  
Hon Steven HO Chun-yin, BBS  
Hon Frankie YICK Chi-ming, JP  
Hon CHAN Chi-chuen  
Dr Hon Fernando CHEUNG Chiu-hung  
Dr Hon Elizabeth QUAT, JP  
Hon Martin LIAO Cheung-kong, SBS, JP  
Hon POON Siu-ping, BBS, MH  
Hon Alvin YEUNG  
Hon CHU Hoi-dick  
Hon Jimmy NG Wing-ka, JP  
Dr Hon Junius HO Kwan-yiu, JP  
Hon Holden CHOW Ho-ding  
Hon YUNG Hoi-yan  
Hon CHEUNG Kwok-kwan, JP  
Hon HUI Chi-fung

**Members absent** : Hon CHUNG Kwok-pan

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

**Public officers  
attending** : Item III

Department of Justice

Mr Keith YEUNG, SC, JP  
Director of Public Prosecutions

Mrs Apollonia LIU, JP  
Deputy Director (Special Duty)

Mr Paul HO  
Senior Assistant Director of Public Prosecutions  
(Office of the Director of Public Prosecutions)

Ms Adeline WAN  
Senior Assistant Solicitor General (Policy Affairs)

Ms Karmen KWOK  
Senior Government Counsel

Miss Janice KWAN  
Senior Government Counsel (Acting)

Hong Kong Police Force

Mr Francis CHAN  
Chief Superintendent of Police (Crime Support)  
(Crime Wing)

Ms Frances LEE  
Chief Inspector of Police (Family Conflict and Sexual  
Violence Policy Unit) (Crime Wing)

Judiciary Administration

Mrs Erika HUI, JP  
Deputy Judiciary Administrator (Operations)

Ms Wendy CHEUNG  
Assistant Judiciary Administrator  
(Development)<sup>1</sup>

Item IV

Department of Justice

Mr Keith YEUNG, SC, JP  
Director of Public Prosecutions

Mr Peter WONG  
Deputy Solicitor General (Policy Affairs)

Mrs Apollonia LIU, JP  
Deputy Director (Special Duty)

Mr Paul HO  
Senior Assistant Director of Public Prosecutions  
(Office of the Director of Public Prosecutions)

Ms LAI Yuen-man  
Assistant Solicitor General (Policy Affairs) (Acting)

Mr Richard MA  
Senior Government Counsel

Hong Kong Police Force

Mr Francis CHAN  
Chief Superintendent of Police (Crime Support)  
(Crime Wing)

Ms Frances LEE  
Chief Inspector of Police (Family Conflict and Sexual  
Violence Policy Unit) (Crime Wing)

**Attendance by  
invitation**

: Item III & IV

Hong Kong Bar Association

Mr Edwin W.B. CHOY

The Law Society of Hong Kong

Mr Stephen HUNG  
Immediate Past President

Mr Kevin SHE  
Research Officer of Practitioners Affairs Department

**Clerk in attendance :** Ms Sophie LAU  
Chief Council Secretary (4)2

**Staff in attendance :** Mr Stephen LAM  
Senior Assistant Legal Adviser 2

Miss Joyce CHING  
Senior Council Secretary (4)2

Ms Jacqueline LAW  
Council Secretary (4)2

Miss Vivian YUEN  
Legislative Assistant (4)2

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**I. Information paper(s) issued since the last meeting**

Members noted that no information paper had been issued since the last meeting.

**II. Items for discussion at the next meeting**

LC Paper No. CB(4)718/16-17(01) -- List of outstanding items for discussion

LC Paper No. CB(4)718/16-17(02) -- List of follow-up actions

2. Members agreed to discuss the following items at the next regular meeting scheduled for 24 April 2017 at 4:30 pm:

- (a) Review of the Supplementary Legal Aid Scheme;

- (b) Review of the Civil Jurisdictional Limits of the District Court and the Small Claims Tribunal; and
- (c) Judicial Manpower Position and Proposed Creation of Judicial Posts and a Supernumerary Directorate Post in the Judiciary

3. The Chairman remarked that subsequent to the launch of Hong Kong e-Legislation in February 2017, she had received views from users of the legal profession. A number of users reflected that there were rooms for improvement regarding the functionality and effectiveness of the new database of Hong Kong's legislation. In this regard, the Chairman suggested and members agreed that the issue should be included in the list of outstanding items for discussion.

*(Post-meeting note: The issue on "Launch of Hong Kong e-Legislation" was discussed at the regular meeting held on 22 May 2017.)*

4. The Chairman reminded members of the visit to the West Kowloon Law Courts Building of the Judiciary scheduled for 21 April 2017. Members were encouraged to enrol for this visit by the registration deadline on 10 April 2017.

5. The Chairman informed members that a special meeting was tentatively scheduled for 8 May 2017 at 9 am for receiving public views on "Law Reform Commission's Consultation Paper on Sexual Offences Involving Children and Persons with Mental Impairment". If no members raised any objection, the Secretariat would follow up with the meeting arrangement. Members agreed.

*(Post-meeting note: the special meeting to receive public views on the Consultation Paper was held on 8 May 2017. A total of 13 deputations/individuals presented their views at the meeting.)*

6. Mr Dennis KWOK expressed concern on the prosecution decision in relation to Occupy Central Movement. Mr KWOK then proposed to discuss the issues of "prosecution policy" and "rule of law". Dr Fernando CHEUNG also proposed to discuss these issues.

7. The Chairman said that the issue of "rule of law" had already been included in the list of outstanding items for discussion. The Chairman further

said that she had taken note of a few members' suggestion of discussing the issues relating to "co-location arrangement" as soon as practicable. She would liaise with the Administration to arrange timeslots for the discussion of the above said items.

*(Post-meeting note: The issue on "The Rule of Law and the Role of the Prosecutor" was discussed at the regular meeting held on 18 July 2017. A joint meeting of three Panels, Panel on Transport, Panel on Security and Panel on Administration of Justice and Legal Services was held on 8 August 2017 to discuss with the Administration the "Customs, Immigration and Quarantine Arrangements of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link".)*

### **III. Measures for handling sexual offence cases and provision of screens for complainants in sexual offence cases during court proceedings**

LC Paper No. CB(4)718/16-17(03) -- Administration's paper on "Enhancing protection of complainants in sexual offence cases and mentally incapacitated persons during court proceedings"

LC Paper No. CB(4)718/16-17(04) -- Administration's paper on "Statute Law (Miscellaneous Provisions) Bill 2017"

LC Paper No. CB(4)718/16-17(05) -- Letter dated 20 March 2017 from the Judiciary Administration providing an update on the various issues relating to the Judiciary on "Measures for handling sexual offence cases and provision of screens for witnesses in sexual offence cases during court proceedings"

LC Paper No. CB(4)718/16-17(06) -- Updated background brief on "Measures for handling sexual offence cases and provision of screens for complainants in sexual offence cases during court proceedings" prepared by Legislative Council ("LegCo") Secretariat

LC Paper No. CB(4)765/16-17(01) Submission from the Association Concerning Sexual Violence Against Women

8. At the invitation of the Chairman, Director of Public Prosecutions ("DPP") briefed members on the latest development of the enhanced protection of complainants in sexual offence cases, including the outcome of the consultation conducted by Department of Justice ("DoJ") on the proposed amendment to the Criminal Procedure Ordinance (Cap. 221) to give the court a discretion to permit complainants of certain sexual offences to give evidence by way of a live television link ("the television link proposal").

9. Senior Assistant Solicitor General ("SASG") (Policy Affairs) briefed members on the proposed amendments to be included in the Statute Law (Miscellaneous Provisions) Bill 2017 ("the Bill"), under seven headings, namely, (a) Criminal Procedure Ordinance (Cap. 221) and Live Television Link and Video Recorded Evidence Rules (Cap. 221J); (b) High Court Ordinance (Cap. 4), District Court Ordinance (Cap. 336) and Competition Ordinance (Cap. 619); (c) District Court Ordinance (Cap. 336); (d) Legal Practitioners Ordinance (Cap. 159) and the Admission and Registration Rules (Cap. 159B); (e) Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597); (f) Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990) and Legislation Publication Ordinance (Cap. 614); and (g) Other miscellaneous amendments.

10. Deputy Judiciary Administrator ("DJA") provided an update on the various issues relevant to the court proceedings, including the provision of protective screens and special passageway.

## Discussion

### *The live television link proposal*

11. Mr Edwin CHOY said that the Bar Association generally agreed to the proposal stated in the consultation paper on the live television link proposal. However, Mr CHOY emphasized that, in taking forward the live television link proposal, it was important to ensure that the fundamental right of the defendant to a fair trial would not be affected. Mr CHOY pointed out that the term "victim" was used loosely in the consultation paper, and that as a matter of fact the complainants of sexual offence cases were only "alleged victims" before the defendants had actually been convicted.

12. Mr Edwin CHOY also expressed that the Bar Association was in total agreement with the Administration's view that, as opposed to a proposal which sought to allow complainants of sexual offences to give evidence by way of a live television and/or to provide a screen automatically, the current proposal to confer the court a discretion to decide on the matter was a more appropriate approach. He believed that in deciding on the above, the magistrates/judges concerned would have to strike a balance between the need to offer protection for the complainants in some special circumstances, the rights of the defendants and the interests of open justice.

13. Mr Stephen HUNG said that Law Society had no objection to the live television link proposal and shared the views of the Administration and the Bar Association on the issues discussed above. He stressed that in proposing any change to administrative arrangement and/or legislative amendments to the relevant ordinance, the court should be given the discretion to make the final decision on the matter having regard to the nature of each case.

14. Mr Holden CHOW, Dr Fernando CHEUNG and the Chairman also expressed support for the live-television link proposal.

15. The Chairman echoed the views of the Bar Association and Law Society in taking forward the live-television link proposal. The Chairman and Dr Fernando CHEUNG also welcomed the implementation of other measures, including the provision of screens to enhance protection for complainants of sexual offence cases and mentally incapacitated persons during court proceedings. Mr Dennis KWOK expressed his appreciation of the Administration's effort in enhancing the protection of complainants of sexual offence cases and mentally incapacitated persons during court proceedings.

*Provision of special passageway and court facilities*

16. Mr Holden CHOW asked whether the Administration could provide information on the existing court buildings which were equipped with the



necessary facilities for the provision of special passageways and those that were not.

17. DPP advised that the arrangement of special passageways was mainly under the purview of the Judiciary. DPP further said that, as mentioned by DJA, further amendments to the relevant Practice Directions with regard to the provision of passageways had been put forward by the Judiciary and that the matter was under consultation until the end of April 2017. DPP advised that DoJ would also provide its comments and/or make suggestions with regard to the proposed amendments. In this connection, DPP highlighted that there were two kinds of special passageways, one from the entrance of the court building to the waiting room, and the other from the waiting room to the courtroom. He pointed out that among the Magistrates Courts, the new West Kowloon Magistrates' Courts Building was well designed to cater for the needs of different users, with some witness waiting rooms reserved solely for vulnerable witnesses.

18. Mr Holden CHOW further asked, if a special passageway was not operationally feasible for a certain court building, whether the relevant case would be transferred to be heard at another court building where the necessary facilities were available. DJA responded in the affirmative.

19. Mr Stephen HUNG of the Law Society also noted that the arrangement of special passageways might not always be operationally feasible given the physical constraints of individual court buildings. Mr HUNG emphasized that, in considering the need for special passageways, due regard had to be given to the interests of all of the users of the court building.

20. Mr Dennis KWOK considered that the existing facilities of the High Court ("HC") were inadequate for meeting its operational needs. He then asked whether the Judiciary had conducted any review on the existing court facilities and whether the JA had any plan to upgrade the facilities of the HC or not.

21. DJA responded that the Judiciary had been reviewing the adequacy of the existing court facilities from time to time based on the operational needs of various levels of courts and had also upgraded the facilities where necessary and feasible. DJA advised that in general the existing court facilities available should be able to meet the operational needs in relation to the implementation of the live television link proposal and the further amendments to be made to the relevant Practice Directions. DJA supplemented that with regard to the provision of special passageways, special arrangement could be made by, for

instance, utilizing restricted staff access or where necessary, transferring the case to another court building as appropriate.

*"Support Person"*

22. Dr Fernando CHEUNG pointed out that relatives, social workers and teachers were often "disallowed" from acting as "support persons" for vulnerable persons at trial and that "support persons" present at trial were often strangers to the witnesses. In this regard, Dr CHEUNG opined that a person whom the witness had known previously and trusted could provide better emotional support to the witness, and hence requested the Administration to review the relevant practice guide to address the concern raised above. Dr CHEUNG also pointed out that it might be necessary to review the procedures in relation to the taking of statements at a police station, for instance, the witnesses should be informed of the protective measures available during the court proceedings, including the arrangement of a "support person".

23. DPP explained that as stipulated in Rule 3(9) of the Live Television Link and Video Recorded Evidence Rules (Cap. 221J), a witness giving evidence through a live television link shall be accompanied by a person (i.e. "support person") acceptable to the court and, unless the court otherwise directed, by no other person. Procedural fairness of the relevant court proceedings and whether the support person had the ability and relevant professional knowledge to provide emotional support for the witness during the trial were important considerations in assessing the above said matter. DPP added that whether a person whom the witness had known previously and trusted (say, the witness' teacher) might be acceptable to the court as a "support person" would be subject to the court's satisfaction that this person would not affect the fairness of the trial and that he/she could provide the necessary emotional support during the trial. DoJ could give further consideration to the issues raised by Dr CHEUNG with due regard to the legal requirements mentioned above.

24. With reference to her experience of handling a case involving dispute on custody order, the Chairman considered that a "support person" should be able to play the role of an independent third party and be objective. The Chairman further said that a social worker whom the witness had known for a long time might have bias on the case owing to the long-term relationship with his/her client. Therefore, the Chairman opined that, in reviewing the relevant guidelines, the relationship between the witness and the "support person" should be an issue to look into. The Chairman also suggested the Administration to consider setting out guidelines with regard to when and where

(say, during the whole proceeding or just part of it and/or before/during/after the trial) a support person was allowed to accompany the witness.

25. DPP said that it was worthy to note that the current Practice Direction in relation to the "support person" was only applicable to the three categories<sup>1</sup> of persons who were permitted to give evidence by way of a live television link but not the complainants of sexual offence cases. In this regard, DoJ would keep in view of the necessary updating of relevant Practice Direction by the Judiciary upon the passing of the Bill.

26. DPP also took the opportunity to clarify that the training of the "support person" was not under the purview of DoJ. Currently, the relevant training was provided by a few organizations, including CEASE Support Centre of Tung Wah Group of Hospitals and the Social Welfare Department ("SWD").

27. Mr Dennis KWOK asked whether there was enough expertise in Hong Kong in respect of "support persons" and whether DoJ would take any measure to enhance the training of "support persons" or not. DPP advised that the training on professional knowledge in relation to the "support person" was mainly under the purview of SWD. However, DoJ staff did have a role to play in ensuring the compliance of court procedures by the "support person" and the procedural fairness of the trial. For instance, DoJ could conduct pre-trial briefings for the witnesses and support persons so as to familiarize them with court procedures and environment of the court.

*Measures to conceal the identity of a witness*

28. Dr Fernando CHEUNG said that the Association Concerning Sexual Violence Against Women had raised the concern that the television screens for live television link were often placed at positions where other relevant people in

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<sup>1</sup> Currently, under section 79B of Cap. 221, the court may, on its own motion or upon application, permit a person falling within any of the following three categories to give evidence by way of a live television link:

- (a) a child (other than a defendant) giving evidence in proceedings in respect of an offence of sexual abuse or cruelty, or of an offence (other than one triable summarily only) which involves an assault on, or injury or a threat of injury to, a person; or
- (b) a mentally incapacitated person (including a defendant) giving evidence in proceedings in respect of an offence that is triable otherwise than summarily only; or
- (c) a "witness in fear" giving evidence in proceedings in respect of any offence.

the courtroom, including the members of the public or media, would be able to see. The above mentioned situation was considered to be undesirable and Dr CHEUNG considered that enhancement measure was necessary to conceal the identity of the witness.

29. DPP responded that the Administration and the Judiciary had taken note of the concern raised by some non-governmental organizations which Dr Fernando CHEUNG mentioned above. DPP advised that even in cases where a complainant of a sexual offence was allowed to give evidence by way of a live television link, the use of screen (to shield the television screen) could still be considered if the case so required (for instance, when there was a need not to disclose to the public the identity of the complainant). DPP emphasized that other measures could still be adopted, subject to the judge's discretion under the common law.

30. DJA supplemented that other special measures would be adopted to cater for the need of the complainants, subject to the circumstances of the case and the design of the court building concerned. In the long run, after the passage of the Bill, feasible enhancements to the facilities of various court buildings would also be explored to facilitate the arrangement of the special measures.

31. Mr Edwin CHOY of the Bar Association did not totally agree that whenever the giving of evidence by way of television link was allowed, the face of the witness should be completely obscured from the public. Mr CHOY considered that the permission for complainants of sexual offences to give evidence by way of a live television aimed to serve two separate purposes, firstly, to prevent the complainants from feeling intimidated by the atmosphere inside the court room; and secondly, to screen the complainant from the eyes of the public. For cases where there was the need to serve the second purpose mentioned above, he agreed that there was the need to place a screen strategically in front of a TV screen for concealing the identity of the complainants. In other cases, there might be reasons whereby open justice would demand that a complainant's face be seen by the public when he/she made accusation against the defendant. In light of the above, Mr CHOY opined that the granting of screen (to shield the television screen) should be subject to the court's discretion and might also be subject to the debate of the counsel representing the parties.

32. Mr Stephen HUNG of the Law Society expressed a contrary view with regard to the issues raised by Mr Edwin CHOY. Mr HUNG opined that the granting of permission for the giving of evidence by way of television link would imply that there was also the need to screen the complainant from the

eyes of the public unless there was good reason to justify the need to show the face of the complainants via the TV screen to people in the court room. Mr HUNG further said that for the purpose of achieving open justice, listening to the presentations by the complainants and their answers in response to the judges and/or the counsel during the course of giving of evidence would suffice.

### Conclusion

33. The Chairman expressed her wish that the Administration and the Judiciary Administration would take into account the suggestions and views of Panel members in relation to the measures to enhance protection of complainants in sexual offence cases.

## **IV. Measures for protecting mentally incapacitated persons during court proceedings**

LC Paper No. CB(4)718/16-17(03) -- Administration's paper on "Enhancing protection of complainants in sexual offence cases and mentally incapacitated persons during court proceedings"

LC Paper No. CB(4)718/16-17(07) -- Administration's paper on "Evidence (Amendment) Bill"

LC Paper No. CB(4)718/16-17(08) -- Background brief on "Measures for protecting mentally incapacitated persons during court proceedings" prepared by LegCo Secretariat

LC Paper No. CB(4)740/16-17(01) Submission from the Civil Society Law Reform Committee

### Briefing by the Administration

34. At the invitation of the Chairman, DPP briefed members on the measures adopted by the prosecution for protecting mentally incapacitated persons ("MIPs") in criminal proceedings and, among others, the plan of DoJ to implement the recommendations as set out in the report of the Law Reform

Commission on "Hearsay in Criminal Proceedings" which was announced in November 2009 ("LRC Report").

35. Deputy Solicitor General ("DSG") (Policy Affairs) briefed members on the key features of the working draft of the proposed Evidence (Amendment) Bill ("Consultation Bill") which sought to implement the recommendations of the above said LRC Report. In gist, the LRC Report recommended that, as a general rule, the present rule against the admission of hearsay evidence should be retained but there should be greater scope to admit hearsay evidence in specific circumstances. Hearsay evidence should be admissible: (a) if it fell within an existing statutory exception; (b) if it fell within one of several common law exceptions to be preserved; (c) if the parties agreed; or (d) if the court was satisfied that it was "necessary" to admit the hearsay evidence and that it was "reliable".

## Discussion

### ***Proposed reform on the law on hearsay evidence in criminal proceedings***

#### *Direction of the reform*

36. Mr Edwin CHOY of the Bar Association of Hong Kong ("Bar Association"), Mr Stephen HUNG the Law Society of Hong Kong ("Law Society"), Mr Dennis KWOK, Dr Fernando CHEUNG and Mr Holden CHOW expressed support for the direction of the proposed reform in relation to hearsay evidence in criminal proceedings.

37. Mr Edwin CHOY of the Bar Association said that there were matters to be clarified before the Bar Association could further comment on the legislative proposal. In particular, Mr CHOY noted that under the Consultation Bill, it was proposed that the threshold reliability condition was only satisfied where the circumstances provided a "reasonable assurance" that the hearsay evidence was reliable. In this regard, Mr CHOY would need further clarification on the wordings to be adopted in the provision of the Consultation Bill. Mr Stephen HUNG also said that the Law Society had to see the working draft bill before giving further comments on the legislative proposal.

38. Owing to the serious concern over the withdrawal of prosecution against the defendant in a recent sexual offence case occurred at the Bridge of Rehabilitation Centre, Mr Dennis KWOK requested the Administration to expedite the work in relation to the above said reform. Noting the DoJ's plan

to introduce the Consultation Bill in 2018, Dr Fernando CHEUNG also urged the Administration to implement the legislative proposal as soon as practicable.

39. In response to Mr Dennis KWOK's enquiry about the Administration's plan to resolve the outstanding issues, DPP responded that the proposed reform comprised of two main parts: (a) the legislative reform to implement the Core Scheme recommended in the the LRC Report and (b) amendments of other rules and regulations and/or measures necessary to be made/ taken to implement the core recommendations. Noting that the Bar Association and the Law Society had agreed on the direction of the reform, DPP was optimistic about the implementation of the core recommendations in relation to the above said reform. DPP further said that DoJ would soon complete the working draft bill and its target was to issue a consultation paper to invite comments on the draft as soon as practicable. He hoped that all relevant stakeholders could work together on the necessary revisions and refinements on the working draft bill with a view to resolving all the outstanding issues and expedite the implementation of the legislative amendments.

40. The Chairman asked whether legislative amendment relating to hearsay evidence was the right direction in order to address the community's concern with regard to protection to MIPs during court proceedings. The Chairman also enquired about the main considerations for the current proposed reform.

41. In reply, DPP said that in proposing the current reform, the Administration would have to ensure that the proposal would be consistent with the principle of open justice which could effectively safeguard the rights of a complainant/witness while at the same time would not affect the fundamental right of a defendant to a fair trial. Moreover, the proposal should be able to pass the tests of rationality and proportionality, especially when it would be subject to challenge under the Basic Law. Furthermore, relevant law and judgments in other jurisdictions, especially the recent judgments delivered by the European Courts of Human Rights in this regime, also served as important reference.

42. DSG (Policy Affairs) supplemented that the current legislative proposal was mainly modeled on the approach adopted in New Zealand, i.e. the admissibility of hearsay evidence (under the core scheme) should be based on two considerations, namely reliability and necessity, whilst other overseas developments were also taken into account.

*The Consultation Bill*

43. Dr Junius HO noted that the Consultation Bill would set out the necessity conditions to be satisfied in order for the hearsay evidence to be ruled admissible by the court. Dr HO then asked about the rationale for proposing "refusal by the declarant to give evidence on ground of self-incrimination" as one of the necessity conditions.

44. In reply to Dr Junius HO's question, DPP responded that this would hinge on the definition of hearsay. DPP explained that a previous statement made by a declarant (being the witness of the present case) outside the court of the present case would still fall under the definition of hearsay. For instance, a previous confession made by an accused made outside the court was also regarded as hearsay evidence and it could only be admissible by engaging the common law exception to the hearsay rule.

45. DSG (Policy Affairs) supplemented that the above proposed necessity condition aimed at giving due protection of human rights. DSG (Policy Affairs) further said that the standard of proof required<sup>2</sup> to prove the satisfaction of the necessity conditions was high. In considering the proposal in this regard, a balance had to be struck between different interests, including the protection of a defendant's right to be presumed innocence until being proven guilty and his/her right to a fair hearing, protection for a witness from being compelled to incriminate oneself and or exposing oneself to criminal prosecution by giving evidence in the court and the interest of open justice.

46. In response to Dr Junius HO's enquiry of whether "witnesses in fear" should be included as one of the necessity criteria, DSG (Policy Affairs) said that the circumstances of "witnesses in fear" were considered to be too broad and thus not appropriate to be included in this context. The reason for not including "witnesses in fear" in the list of necessity conditions had been set out in paragraph 9.51 of the LRC Report.

***Other measures for protecting MIPs in criminal proceedings***

47. Mr Edwin CHOY said that the Bar Association generally agreed with the Administration's view with regard to the protection to MIPs in court proceedings. In particular, the Bar Association agreed that empirical study

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<sup>2</sup> The Consultation Bill provided that the party applying to admit hearsay evidence had the burden of proving the necessity condition according to the required standard of proof, which would be beyond reasonable doubt if the applicant was the prosecution and on a balance of probabilities if the applicant is the defence.



would be required before considering whether there was any further practical need to introduce the English pilot measure with regard to ground rules hearing.

48. Mr Stephen HUNG of the Law Society echoed with the Bar Association's view mentioned above. Mr HUNG said that the suggested measures for protecting MIPs in court proceedings set out in the submission from the Civil Society Law Reform Committee were new ideas and thus much more information would be required before the Law Society could give comments on this matter.

49. Noting that the proposal to introduce the English pilot measures with regard to ground rules hearing and the arrangement for vulnerable witnesses to give video-recorded evidence was being examined, Mr Holden CHOW asked whether the consultation in this regard could be done in parallel with the consultation on hearsay in criminal proceedings.

50. DPP responded that the current work plan of the Administration was to focus on the implementation of the recommendations in the LRC Report. As regards Mr Holden CHOW's suggestion, DPP said that the proposal of other measures might involve other complex and controversial issues which might in turn delay the progress of the reform of the hearsay law. DPP further said the Youth Justice and Criminal Evidence Act, among others, which sought to introduce a range of measures that could be used to facilitate the gathering and giving of evidence by vulnerable witnesses was enacted in 1999 in England. Nevertheless, some of the measures, for instance, video-recorded evidence, were only implemented in 2015 under a pilot scheme. The above implementation timeframe illustrated the complexity of the issues and the time that would be required for the consideration of the matter under the English pilot measures. Mr Stephen HUNG of the Law Society supported DPP's view.

51. Dr Fernando CHUENG queried whether the existing procedures/guidelines available under the current legislation had provided sufficient guidance on the manner of pre-arraignment cross-examination so as to protect MIPs during the hearing.

52. DPP responded that the giving of pre-trial directions on the manner of cross-examination was within the inherent jurisdiction of a High Court judge. Similar directions were envisaged in for example paragraph 9 of Practice Direction 9.5 issued by the Judiciary. DPP said that the above mentioned directions had formed a good basis for the development of ground rules hearing in Hong Kong. DPP further said that DoJ would examine the English pilot scheme and consider taking steps to progressively enhance the protection for witnesses. It was also hoped that no change in the substantive law would be required if the ground rules hearing and other suitable protective measures in

Hong Kong (for instance, the arrangement of "pre-trial evidence sessions" which allowed pre-decided and toned down questions and the use of intermediary to court proceedings) were to be adopted in Hong Kong.

### Conclusion

53. While acknowledging that further or substantial delay in the reform in hearsay law might cause injustice, Mr Edwin CHOY of the Bar Association considered that careful law drafting by the Administration and consultation with the public and relevant bodies would be required since the above said reform involved fundamental change in criminal jurisprudence.

54. Sharing the Bar Association's view, Mr Stephen HUNG of the Law Society remarked that the reform in hearsay law would apply to all criminal proceedings instead of just applying to cases which involved vulnerable witnesses and thus he considered that this reform would have far-reaching impact in this regime.

55. The Chairman concluded that reform on hearsay law involved public policy considerations. In taking forward the reform, it was important to strike a balance on different views, including the views from legal and academic perspectives as well as public's views on the need to protect vulnerable witnesses during court proceedings.

### **VI. Any other business**

56. There being no other business, the meeting ended at 6:42 pm.