

立法會

Legislative Council

LC Paper No. CB(4)589/18-19
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by the Administration))

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Panel on Administration of Justice and Legal Services

Minutes of policy briefing cum meeting held on Monday, 29 October 2018, at 4:30 pm in Conference Room 1 of the Legislative Council Complex

Members present : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)
Hon Dennis KWOK Wing-hang (Deputy Chairman)
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Kin-por, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon CHAN Chi-chuen
Dr Hon Fernando CHEUNG Chiu-hung
Hon Martin LIAO Cheung-kong, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
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 James TO Kun-sun
Hon CHUNG Kwok-pan

**Public officers
attending**

: Agenda item IV

Department of Justice

Ms Teresa CHENG, SC
Secretary for Justice

Mr Wesley WONG, SC
Solicitor General

Ms Christina CHEUNG
Law Officer (Civil Law)

Mr Paul TSANG
Law Officer (International Law)

Ms Theresa JOHNSON
Law Draftsman

Mr David LEUNG, SC
Director of Public Prosecutions

Mr Alan SIU
Director of Administration & Development

Administration Wing, Chief Secretary for
Administration's Office

Ms Kitty CHOI, JP
Director of Administration

Ms Jennifer CHAN
Deputy Director of Administration (2)

Ms Karyn CHAN
Assistant Director of Administration (2)

Legal Aid Department

Mr Thomas Edward KWONG, JP
Director of Legal Aid

Agenda item V

Administration Wing, Chief Secretary for
Administration's Office

Ms Kitty CHOI, JP
Director of Administration

Ms Jennifer CHAN
Deputy Director of Administration (2)

**Attendance by
invitation** : **Agenda item IV**

Hong Kong Bar Association

Mr Philip DYKES, SC

Mr Randy SHEK

Ms Lorraine TSANG

Agenda item V

Hong Kong Bar Association

Mr Philip DYKES, SC

Ms Lorraine TSANG

Clerk in attendance : Mr Lemuel WOO
Chief Council Secretary (4)6

Staff in attendance : Mr YICK Wing-kin
Senior Assistant Legal Adviser 2

Ms Macy NG
Senior Council Secretary (4)6

Ms Emily LIU
Legislative Assistant (4)6

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(4)103/18-19 - Minutes of meeting on 11 October 2018)

The minutes of the meeting held on 11 October 2018 were confirmed.

II. Information paper(s) issued since the last meeting on 18 July 2018

(LC Paper No. CB(4)1571/17-18(01) - Judiciary Administration's response to the letter from Hon CHEUNG Kwok-kwan on the handling of religious and cultural matters of the ethnic minority

LC Paper No. CB(4)1592/17-18(01) - Submission from the Hong Kong Bar Association relating to the length of remands

LC Paper No. CB(4)1602/17-18(01) - Judiciary Administration's information paper on "Reducing the Use of Paper in the Judiciary"

LC Paper No. CB(4)1602/17-18(02) - Judiciary Administration's information paper on "Enhancing the User-friendliness of the Judiciary Website by Introducing a Function for Searching of Daily Cause Lists")

2. Members noted the above papers issued since the last meeting. The Chairman sought members' views on whether the Panel on Administration of Justice and Legal Services ("the Panel") should follow up the submission from the Hong Kong Bar Association ("the Bar Association") relating to the length of remands (LC Paper No. CB(4)1592/17-18(01)).

3. Dr Fernando CHEUNG considered that, as many persons on remand were under pre-trial custody, it was appropriate for the Panel to discuss the relevant policy and the Bar Association's concerns about the length of remands.

The Chairman suggested and members had no objection to including the above item in the Panel's list of outstanding items for discussion.

III. Items for discussion at the next meeting

(LC Paper No. CB(4)102/18-19(01) - List of outstanding items for discussion

LC Paper No. CB(4)102/18-19(02) - List of follow-up actions)

4. Members agreed to discuss the following items at the next regular meeting to be held on 26 November 2018 –

(a) Employment opportunities and system in the Judiciary for law students and legal practitioners; and

(b) Community legal assistance in Hong Kong.

5. Dr Fernando CHEUNG enquired if members might ask questions relating to the legal assistance schemes administered under the Duty Lawyer Service ("DLS") under item (b) above. The Chairman replied that members might raise any questions relevant to the community legal assistance in Hong Kong.

(Post-meeting note: Members were informed via LC Paper No. CB(4)157/18-19 on 5 November 2018 that at the request of the Administration and with the concurrence of the Chairman, the item on (a) above was replaced by "Proposed arrangement between Hong Kong and the Mainland for reciprocal recognition and enforcement of judgments in civil and commercial matters".)

IV. Briefing by the Secretary for Justice and the Director of Administration on the Chief Executive's 2018 Policy Address

(LC Paper No. CB(4)20/18-19(01) - Paper provided by the Department of Justice

LC Paper No. CB(4)20/18-19(02) - Paper provided by the Chief Secretary for Administration's Office)

Briefing by the Administration

6. At the invitation of the Chairman, Secretary for Justice ("SJ") and Director of Administration ("DoA") briefed members on the policy initiatives under respective purviews in the Chief Executive ("CE")'s 2018 Policy Address and Policy Agenda.

(Post-meeting note: The speaking notes of SJ and DoA tabled at the meeting were issued to members vide LC Paper Nos. CB(4)134/18-19(01) and (02) respectively on 30 October 2018.)

Discussion

7. The Chairman invited members' views as well as the representatives of the Bar Association to give their views on the various policy initiatives of SJ and the Chief Secretary for Administration's Office ("CSO") in CE's Policy Address and Policy Agenda.

Legal aid

8. Mr Holden CHOW recalled that when a Subcommittee examined the proposed resolution of the Administration to raise the financial eligibility limits ("FELs") of legal aid applicants in late 2017, members considered that, since the number of persons eligible for legal aid under the current levels of FELs for both the Ordinary Legal Aid Scheme ("OLAS") or the Supplementary Legal Aid Scheme ("SLAS") had fallen short of demand, a comprehensive review of FELs should be conducted taking the inflation in private litigation costs into account. However, Mr CHOW noted with concerns from the Administration's paper that the two legal professional bodies could not provide information on private litigation costs to assist the Administration in its biennial review of FELs.

9. In response, DoA said that while the information on private litigation costs was not available from the legal professional bodies, CSO would continue to explore other possible means to gather the information, such as from the Judiciary and the Legal Aid Department ("LAD"). CSO would consider the possible way forward and report to the Legal Aid Services Council ("LASC") and the Panel in due course. It was hoped that the pool of eligible legal aid applicants under both OLAS and SLAS could be expanded if information on litigation costs supported an increase in FELs.

10. In response to Mr Holden CHOW's concerns, Mr Randy SHEK of the Bar Association explained that the litigation costs were agreed between the litigants involved or taxed by a taxing master, hence the information was

protected from disclosure. In this connection, it was not possible for the Bar Association to obtain the information on private litigation costs in civil cases from its members to consolidate the information as requested by the Administration.

11. The Deputy Chairman welcomed the various measures to enhance the legal aid services set out in the Administration's paper and asked about the timetable for their implementation. In reply, DoA said that under the guidance and advice of LASC, the Administration had been introducing continuous improvement measures to the legal aid system. For example, the responsibilities for formulating legal aid policy and housekeeping LAD had been transferred from the Home Affairs Bureau to CSO. Furthermore, in addition to the measures mentioned in the paper, the Administration would shortly introduce legislative amendments into the Legislative Council ("LegCo") to expand the scope of SLAS, and to significantly increase in the amounts of the Director of Legal Aid ("DLA")'s first charge that could be exempted or waived in certain cases for the benefit of aided persons.

12. Mr Randy SHEK expressed concern about the channel of appeal against refusal of legal aid application for criminal cases. In reply, DLA said that under the current legislation, if an application for legal aid for a criminal case was refused by LAD, the judge at the High Court ("HC") level or above hearing the case/appeal might grant legal aid to the applicant direct. DLA explained that this would be a more efficient mechanism for handling appeal against refusal of legal aid applications for criminal cases.

Legal advice schemes

13. Mr Randy SHEK considered that the services provided under the Legal Advice Scheme for Unrepresented Litigants on Civil Procedures ("Procedural Advice Scheme") and the Free Legal Advice Scheme ("FLA Scheme") should be strengthened so that some disputes might be settled at an early stage through mediation rather than litigation. In this way, the civil caseload of the courts might also be relieved.

14. SJ said that she was pleased to note Mr SHEK's view regarding the Bar Association's support of using mediation as an alternative means of dispute resolution. However, mediation was not suitable for dealing with criminal cases, legal advice and torture claims which were the cases mainly dealt with under the Procedural Advice Scheme or the FLA Scheme.

15. Mr Philip DYKES, SC, of the Bar Association welcomed the Administration's decision to set up an office for the Procedural Advice Scheme in the Wan Chai Law Courts Building in addition to the existing one in the HC

Building. However, as the Scheme also covered unrepresented litigants who were parties to civil legal proceedings in the Lands Tribunal, District Court ("DC"), Family Court, Court of First Instance ("CFI") and the Court of Appeal of HC and the Court of Final Appeal, he suggested setting up a team comprising counsel and paralegals to provide first-aid legal assistance to litigants at the various courts where the service was needed.

16. Mr Philip DYKES, SC also suggested relocating some centres for providing duty lawyer service under the FLA Scheme to areas where quick and needed legal advice was required on the spot, e.g. Tin Shui Wai. He considered that this would help reduce the need of bringing certain cases to the courts and hence relieve the workload of the latter.

17. The Deputy Chairman echoed the Bar Association's concerns about the legal advice services provided at early stage and asked when the proposed enhancement to DLS could be implemented. In reply, DoA explained that DLS, while receiving government subvention to implement legal assistance schemes, was administered jointly by the Bar Association and the Law Society of Hong Kong through the Council of DLS. In this connection, CSO would cooperate with the two legal professional bodies to explore ways to further improve the existing schemes implemented by DLS.

Duty lawyer fees

18. Mr Randy SHEK said that the Bar Association welcomed the Administration's proposal to significantly increase the duty lawyer fees payable to duty lawyers providing legal assistance under the Duty Lawyer Scheme which provides legal representation to eligible defendants who appeared in Magistrates' Courts, Juvenile Courts and the Coroners' Court. However, Mr SHEK hoped that the Administration would review the duty lawyer fees at more frequent intervals in the future to maintain the fees at a reasonable level.

19. Mr Randy SHEK further said that the Bar Association had suggested that the Administration should make reference to the criminal legal aid fee system administered by LAD and the prosecution fee system administered by the Department of Justice ("DoJ"). Mr SHEK pointed out that the payment of criminal legal aid fees and prosecution fees would take into account the required preparation time for the cases concerned as assessed by LAD/DoJ respectively, and the private counsel engaged by LAD and DoJ might seek a re-determination of the agreed fees to reflect more accurately the actual preparation time spent, but that was not the case for duty lawyer fees.

Employment opportunities for legal practitioners in the Judiciary

20. Mr Philip DYKES, SC said that the Bar Association welcomed the measures undertaken by the Administration and the Judiciary to help retain senior and experienced judicial talents, and to attract experienced legal practitioners in the private practice to join the Bench. It also supported providing more employment opportunities in the Judiciary. Mr Philip DYKES, SC added that recruiting more female legal practitioners to join the bench might help increase the diversity of mix of Judges and Judicial Officers ("JJOs").

Groom talent by the Department of Justice

21. Mr Randy SHEK expressed support for expanding the Understudy Programme for less-experienced barristers in private practice under DoJ to provide more opportunities for them to gain precious experience and skills in handling prosecution cases. He said that DoJ should provide those who had completed the programme with further exposure to more high-profile prosecution cases. Mr SHEK also reiterated his concern raised previously about the very low token daily rate.

22. Noting that some criminal cases were briefed out by DoJ with the specific objective of promoting a strong and independent local Bar, Mr Randy SHEK urged that more cases should be briefed out to the less experienced barristers in the private practice to provide them with the valuable experience in public prosecutions. Mr SHEK also relayed the concerns of some barristers briefed on fiat that DoJ should be more transparent in providing information about the criteria for progression of such barristers from the Magistrates' Courts' lists to higher courts' lists.

Law reform proposals

23. The Deputy Chairman and Mr Holden CHOW were concerned about the slow work progress of the cross-sector working group on Class Actions ("the Working Group"), which was set up by DoJ to study The Law Reform Commission of Hong Kong ("LRC")'s proposals of introducing a class action regime in the Hong Kong Special Administrative Region ("HKSAR"), in particular the consumer class action regime which the Administration had stated that it would implement first as a start. Mr CHOW enquired whether the Working Group would publish an interim report to inform the public about its work progress.

24. The Chairman referred to some recent incidents involving the leakage of massive personal data such as the Registration and Electoral Office's loss of a notebook computer containing over 3 million voters' personal data, and the Cathay Pacific Airways' report that over 9 million of its passengers' data (including credit card information) had been leaked out. She noted that the consumer class action should provide an avenue for lodging claims under such circumstances by individual customers suffering losses or damages who could not afford taking legal action on their own.

25. In response to members' concerns, SJ said that it had been the recommendation of LRC to first implement a class action regime for consumer-related cases as a start. One of the major difficulties faced by the Working Group, however, was on how to define "consumer-related case". SJ undertook that she would urge the Working Group and its Sub-committee to expedite their work, and to explain to the public the difficulties they encountered so long as it would not disclose the details about their work. Solicitor General of DoJ supplemented that the study undertaken by the Working Group and its Sub-committee involved many complicated issues. He also informed members that the Sub-committee was considering in parallel a draft Bill consisting of 43 clauses.

26. Mr CHEUNG Kwok-kwan expressed concern about a recent HC's ruling that the charge of an offence of accessing a computer with dishonest intent had been wrongly applied to the prosecution of smartphone-related crimes, such as clandestine photo-taking activities. While DoJ had already lodged an appeal against the HC's ruling and that LRC was reviewing the miscellaneous sexual offences including voyeurism, Mr CHEUNG asked if SJ would be more proactive in introducing a legislative proposal to deal with the clandestine photo-taking acts which were of grave public concern.

27. In reply, SJ said that the relevant court ruling was under appeal and if the appeal was allowed, there might not be a need to enact new legislation to handle clandestine photo-taking acts. She further advised that LRC would study the issue from the perspective of reforming the miscellaneous sexual offences and DoJ would revert to the Panel if there were major developments on the matter.

28. Mr Randy SHEK added that the Bar Association had also given its views to LRC that the Administration should consider introducing a separate offence against the clandestine photo-taking acts.

29. Mr Paul TSE pointed out that the Land Titles Ordinance (Cap. 585) had been enacted for a long time and asked whether the Administration would implement the Ordinance or not. SJ replied that as the matter was under the

Development Bureau ("DevB"))'s purview, she would relay Mr TSE's concern to DevB.

Legislation and administrative measures on gender recognition

30. Mr CHAN Chi-chuen asked when the Inter-departmental Working Group on Gender Recognition ("IWG") would report on the results of the first part of the public consultation on gender recognition issues, and work out the timetable on the proposed way forward. He urged SJ to expedite the work of IWG to protect the rights of transgender persons.

31. In reply, SJ said that soon after she assumed SJ's office in January 2018, she had been briefed about the 17 500 submissions received during the public consultation at an IWG meeting and the preliminary ideas on how to deal with those submissions. It was followed by another IWG meeting at which a proposed scheme to categorize the submissions for analysis was considered. SJ said that as the submissions contained a wide variety of views, many of which had provided valuable insights to IWG, detailed consideration was required and IWG was still working on them. Nevertheless, it remained IWG's target to report the results of the public consultation and the proposed way forward to the Panel in 2019.

32. Mr CHAN Chi-chuen was concerned if the Administration would decide whether or not to establish a gender recognition scheme through legislation after completion of the first part of IWG's study, or would defer that decision until after completion of the second part. In reply, SJ said that it was IWG's hope that it would come up with a direction to further its work after completing the first part of its study. However, whether and to what extent that could be achieved depended on the outcome of the first part study and the connection that it might have with the second part of the study.

33. The Chairman said that the issue on gender recognition was highly controversial. She reminded the Administration that it should take a neutral stance and listen to the diverse views of the community when dealing with the submissions received during the public consultation. She stressed that, even if a large quantity of submissions received might be similar in views, IWG should give weight to each and every one of them and not regard them as just one single collective view.

Enhancing the Hong Kong Special Administrative Region's legal framework and infrastructure in respect of arbitration and mediation

34. The Deputy Chairman urged the Administration to implement the relevant legislative amendments under the Arbitration and Mediation

Legislation (Third Party Funding) (Amendment) Ordinance 2017 by the end of 2018 to implement the third party funding of arbitration, mediation and related proceedings. He also enquired if the Administration would study the feasibility of implementing conditional fees for arbitration in HKSAR and conduct a public consultation on the matter.

35. In reply, SJ advised that DoJ was collecting views on a draft Code of Practice for Third Party Funding of Arbitration and Mediation from the relevant stakeholders. DoJ would then follow up those views as well as the issues raised during the public consultation. It was hoped that the relevant work could be completed as soon as possible. As regards the conditional fees for arbitration in HKSAR, SJ said that DoJ's current priority was to implement the third party funding of arbitration.

36. The Deputy Chairman urged SJ to start with the feasibility study on conditional fees as soon as possible after implementation of the third party funding of arbitration, mediation and related proceedings.

Promoting Hong Kong as a leading centre for international legal and dispute resolution services

37. The Chairman, the Deputy Chairman, Ir Dr LO Wai-kwok and Mr Holden CHOW supported SJ's work on developing and promoting HKSAR's arbitration services. The Chairman considered that legal practitioners should enhance their competitiveness in arbitration to benefit from globalization.

38. Ir Dr LO Wai-kwok considered that the Administration should leverage the Belt and Road Initiatives in promoting HKSAR as a leading centre for providing international arbitration services. Specifically, it should spend more efforts on promoting the use of HKSAR's dispute resolution services in contracts on major international trade or infrastructural projects entered into by the HKSAR Government or companies. Ir Dr LO added that he had proposed promoting HKSAR as an international arbitration centre at the meeting of the Chinese People's Political Consultative Committee held in March 2018.

39. Ir Dr LO Wai-kwok further noted that developing HKSAR into a centre providing international dispute resolution services would not just benefit the legal and arbitration practitioners, but other professionals such as the engineers and surveyors. In that regard, he urged DoJ to strengthen its liaison with professions outside the legal sector in HKSAR, such as the Hong Kong Institution of Engineers ("HKIE"). He supplemented that HKIE had set up a Committee to promote the use of alternative dispute resolution mechanisms for handling construction disputes.

40. In reply to Ir Dr LO, SJ said that when necessary, DoJ would liaise with the relevant professional bodies or organizations outside the legal sector when promoting HKSAR's arbitration services. For example, for the Public-Private Partnership Conference and Expo which would be jointly organized by DoJ, the United Nations Commission on International Trade Law and the Asian Academy of International Law in early 2019, as engineering and other professions would certainly be involved in public-private partnerships in infrastructural projects, DoJ would liaise with the relevant professional bodies in the course of organizing the event.

41. Mr Philip DYKES, SC recognized SJ's efforts in the promotion of HKSAR's legal system internationally, and stressed the importance of her work in this area. During his participation in the International Bar Association ("IBA") Annual Conference held recently, he noted that the legal sectors from different countries were actively advertising their legal services to participants from all over the world. He urged the Administration and the private legal practitioners of Hong Kong to seize the opportunity to promote the legal services of Hong Kong during the IBA Annual Conference to be held in Seoul in 2019, and promised that the Bar Association would do its utmost in that regard at that event.

42. Mr Paul TSE said that while he appreciated the efforts of SJ and her colleagues in promoting HKSAR's legal and dispute resolution services internationally, he hoped that SJ could pay more attention to local affairs under her purview which were of great concern to the people of HKSAR, and must not give the impression that she was absent from such issues.

43. SJ explained that as the Hong Kong economy was externally oriented, the development of HKSAR's legal professional services had to match with that trend and, in this regard, it was important to promote Hong Kong legal services. At the same time, it was also important to explain to overseas audience how the implementation "one country, two systems" had not affected the legal system or rule of law in Hong Kong to allay their worries. Nevertheless, SJ emphasized that it did not mean that she would neglect local affairs in the legal sector.

Secretary for Justice's communication with the public

44. Ms Starry LEE said that while she agreed with SJ's view that communication with the legal profession and the young people was very important for her duties, she considered it equally important for SJ to communicate more often with LegCo Members and the general public. Ms LEE also said that she was aware of the comments of some members of the public that SJ rarely gave her views or responded to local affairs or issues of

significant impact for HKSAR, and rarely appeared before the public other than at the Panel meetings.

45. In reply, SJ said that she hoped that members would understand it was sometimes inappropriate for DoJ or herself to respond or comment on some local issues of wide public concern, in particular if they were the subject of legal challenges or cases were on appeal or pending prosecutorial decisions were involved and the relevant facts were not available to the public. However, she stressed that besides meetings of the Panel, she would attend Council meetings as and when necessary.

Promotion of the Basic Law

46. Ms Starry LEE noted that CE had stated her view about legislating Article 23 of the Basic Law ("BL 23") and Ms LEE considered that there was a pressing need to legislate BL 23 with a view to upholding "one country, two systems". She asked SJ to give her views on this subject.

47. SJ said that as CE had expressed in her speech delivered on the 2018 Policy Address, the HKSAR Government had the constitutional responsibility to legislate BL 23 in order to safeguard national security. SJ echoed CE's speech in that the Government would carefully consider all relevant factors, act prudently and continue its efforts to create a favourable social environment for the legislative work, but it did not suggest that the Government would turn a blind eye to the acts of violating the Constitution and the Basic Law, attempting to secede from the country and endangering national security; or that the existing laws would be put aside and never be applied to deal with certain acts that should be prohibited. SJ said that she fully agreed with CE's views expressed in her speech, and the Administration would listen to the public's views earnestly and explore ways to enable the Hong Kong society to respond positively to this constitutional requirement on HKSAR.

48. Ms Starry LEE pointed out that legislating BL 23 was an important constitutional responsibility for the HKSAR Government but some people had demonized BL 23 and the related legislative work. As DoJ had an important role to play in the promotion of the Basic Law, Ms LEE urged SJ to make more effort in promoting BL 23 and keep the Panel informed of any developments in this area.

Legislation for the protection of personal data privacy

49. The Chairman referred to those incidents involving the leakage of massive personal data as mentioned in paragraph 24 above. She asked whether DoJ would liaise with the Privacy Commissioner for Personal Data to

review the existing legislation to see if any amendments were required to enhance the protection of personal data privacy.

50. SJ agreed that the recent incidents involving the leakage of personal data had generated wide public concern. However, as the policy on protection of personal data privacy as well as the Personal Data (Privacy) Ordinance (Cap. 486) were under the purview of the Constitutional and Mainland Affairs Bureau ("CMAB"), SJ considered it more appropriate for CMAB to follow up.

51. The Chairman considered that as there might be loopholes in certain existing legislation which could not effectively protect personal data from leakage, DoJ should be more proactive in reviewing whether such loopholes existed in the current legislation together with CMAB and other relevant Bureaux/Departments.

Mutual legal assistance and arrangement

52. Mr Holden CHOW reiterated his concerns raised at the Panel meeting previously that, as there was no mutual legal assistance and arrangement on surrender of fugitive offenders between HKSAR and Taiwan, justice might not be upheld for certain crimes committed by Hong Kong residents in Taiwan. He enquired whether the Administration would start studying how to deal with that issue.

53. SJ said that while it was not appropriate for her to comment on an individual case, she was also concerned about the issue raised by Mr Holden CHOW and the Administration would keep on with its work to establish mutual legal assistance with other jurisdictions.

Estate of the late Mrs Nina WANG

54. Mr Paul TSE enquired about the progress of DoJ in formulating a scheme for utilizing the funds of the Estate of the late Mrs Nina WANG for charitable purposes. In reply, SJ advised that DoJ had been taking forward the relevant work. She hoped that DoJ would be in a position to inform members about the approach that would be taken by the end of 2018.

(Post-meeting note: Members were informed via LC Paper No. CB(4)339/18-19(01) of the Administration's response to members' request for information raised at the Panel meeting on 20 July 2015 on the administration of the Estate of the late Mrs Nina WANG".)

Invalidation of the nomination of a candidate of 2018 Legislative Council Kowloon West geographical constituency by-election

55. Mr HUI Chi-fung expressed concern about a case in which the nomination of a candidate for the 2018 LegCo Kowloon West geographical constituency by-election was invalidated by the Returning Officer ("the disqualification case") on the basis of the candidate's political platform and opinion. Mr HUI considered that this was against the rule of law and the Returning Officer had deprived the candidate of the candidate's political right to run for election. He asked whether DoJ or SJ herself had given advice to the Returning Officer in arriving at the decision and the reasons why the nomination was invalidated.

56. SJ said that since there might be legal proceedings relating to the disqualification case, it was not appropriate for her to give further comments regarding that case. She further said that, as the legal adviser to the Government, DoJ would give legal advice to Bureaux/Departments upon their requests and the same applied to providing legal advice to the Returning Officer in the disqualification case. SJ stressed that the decision to invalidate any nominations was made by the Returning Officer himself/herself who should observe the the law and consider the relevant facts available to him/her. Furthermore, the judgment handed down by Mr Justice AU Hing-cheung on the election petition lodged by CHAN Ho-tin (Case No. HCAL 162/2016) had also provided relevant guidance for the Returning Officer.

57. The Deputy Chairman said that in the judgment on Case No. HCAL 162/2016, Mr Justice AU had laid down the principle that procedural fairness dictated that the nominee must generally be given a reasonable opportunity to respond to any materials that the Returning Officer regards as negating a genuine intention on the part of the nominee to make the declaration, and the Returning Officer should take into account the responses in deciding whether there were cogent, clear and compelling materials to show objectively that the nominee did not have the requisite intention. The Deputy Chairman pointed out that procedural fairness was not observed in the disqualification case.

(At 6:22 pm, the Chairman extended the meeting for 15 minutes to 6:45 pm.)

Motion proposed by Mr HUI Chi-fung

58. The Chairman informed members that she had received a request from Mr HUI Chi-fung for moving a motion of no confidence to SJ in the light of the Government's disqualification of LegCo election candidates. She ruled in accordance with Rule 22(p) of the House Rules that the motion could not be

proposed since the motion was not directly related to the agenda item under deliberation.

59. Mr Holden CHOW agreed to the Chairman's ruling as the motion was irrelevant to the agenda item. He also said that as there might be legal proceedings relating to the disqualification case, to deal with the motion might prejudice that case.

60. Mr HUI Chi-fung raised a point of order and voiced his disagreement with the judgement of the Chairman. He pointed out that the Chairman had allowed a motion with similar wording to be dealt with at the special meeting of the Panel on 29 January 2018 under the item on "Policy initiatives of DoJ". He was unconvinced of the Chairman's current ruling that his motion was not relevant to the agenda item under deliberation.

61. The Chairman explained that the current agenda item under deliberation was different from that of 29 January 2018. As she had considered and decided that the above-mentioned motion raised at the meeting on 29 January 2018 was relevant to the agenda item, it was dealt with at that meeting.

62. Mr HUI Chi-fung repeatedly raised points of order on the same issue although the Chairman had made her ruling on the points of order raised by Mr HUI. Mr HUI also repeatedly interrupted the Chairman who was speaking and, despite the Chairman's request that he should stop and her repeated warnings, Mr HUI continued to do so. The Chairman then ruled that Mr HUI Chi-fung's conduct was grossly disorderly and ordered him to withdraw from the meeting under Rule 45(2) of the Rules of Procedure. As Mr HUI refused to leave the conference room, the Chairman instructed the security personnel to enforce her order.

(The meeting was suspended at 6:36 pm and resumed at 6:37 pm.)

(Post-meeting note: 24 Members issued a joint declaration on 30 October 2018 regarding the handling of Hon HUI Chi-fung's motion at the meeting. The Clerk issued a reply letter to the 24 Members on the same date. A copy of the above two letters were issued to Panel members on 30 October 2018 via LC Paper Nos. CB(4)139/18-19(01) and (02).)

V. 2018-2019 Judicial Service Pay Adjustment

(File Ref: AW-275-010-015-001

- Legislative Council brief on 2018-2019 Judicial Service Pay Adjustment

LC Paper No. CB(4)102/18-19(03)

- Paper on judicial service pay adjustments prepared by the Legislative Council Secretariat (updated background brief))

63. At the invitation of the Chairman, DoA briefed members on the judicial service pay adjustment for 2018-2019, the details of which were set out in the LegCo brief. She said that on the recommendation of the Standing Committee on Judicial Salaries and Conditions of Service, CE in Council had decided that the pay for JJOs for 2018-2019 should be increased by 4.69%.

64. The Chairman reminded members that in accordance with Rules 83A and 84 of the Rules of Procedure, they should disclose the nature of any direct or indirect pecuniary interests relating to the subject under discussion at the meeting before they spoke on the subject, and observed the relevant rules on voting under the circumstances.

Discussion

65. As invited by the Chairman, Mr Philip DYKES, SC said that the Bar Association indicated support for the proposed judicial service pay adjustment. He added that, in view of the heavy workload and great pressure faced by JJOs, the Bar Association considered it important to enhance the judicial salaries and conditions of service so as to attract and retain talents in the Judiciary.

(At 6:41 pm, members raised no objection to the Chairman's proposal to further extend the meeting for 15 minutes to 7:00 pm.)

Judicial salaries and conditions of service

66. The Deputy Chairman said that the legal sector in general supported the proposed pay increase for JJOs. Noting that the housing benefits for Judges at the HC level and above had been enhanced with effect from 1 April 2017, which was part of the enhanced JJOs' remuneration package with a view to attracting a sufficient number of quality candidates to join the Bench, the Deputy Chairman enquired about the details of the existing housing benefits.

67. In response, DoA said that Judges at the HC level and above were provided with Judiciary Quarters ("JQs"). If JQs were not available, eligible judges would receive the Judiciary Quarters Allowance ("JQA"), which was a non-accountable cash allowance of more than \$160,000, in lieu of JQs. According to the latest figure, 25 eligible judges were residing in JQs and no more JQ was available, four eligible judges were receiving JQAs, and 13 judges were not entitled to either JQs or JQA owing to the forfeiture rule or prevention of double housing benefits rule.

68. The Deputy Chairman enquired whether the Administration would consider improving the housing benefits provided for JJOs at the DC level. In reply, DoA explained that various types of housing benefits had been offered to eligible JJOs in accordance with the established mechanism.

69. Noting that a number of JJOs had joined the Bench at a late stage of their career in private practice, the Chairman expressed concern about the retirement benefits provided for them. In reply, DoA advised that retirement benefits applicable to JJOs would depend on their terms of appointment. In response to the Chairman's further enquiry, DoA said that JJOs would not receive any housing benefit after retirement.

Shortage of manpower in the Judiciary

70. Mr Holden CHOW expressed support for the proposed judicial service pay adjustment. He considered that enhancements in judicial salaries and conditions of service were instrumental in attracting capable legal practitioners to join the Bench, thereby alleviating the longstanding problem of manpower shortage at some levels of courts.

71. The Deputy Chairman expressed concern about the manpower situation in the Judiciary and enquired about the latest number of vacancies of the CFI Judges. DoA replied that as at 30 September 2018, against the establishment of 34 posts of the CFI Judges, 26 were substantively filled. The vacancy rate stood at around 24%. DoA further said that the Judiciary had appointed seven Deputy Judges to relieve the workload at the CFI level.

72. The Deputy Chairman considered that engaging temporary judicial resources, such as internal/external deputy and temporary or acting JJOs, was only a short-term palliative. He therefore urged the Judiciary to fill all the available vacancies at the CFI level as soon as practicable so as to solve the manpower shortage problem in the long run.

73. Given that the judicial service pay had been adjusted and the enhanced conditions of service for JJOs had been introduced to attract outside talents to join the Bench, the Chairman considered it unacceptable that there were still eight vacancies of judges in CFI. She urged the Judiciary to step up its efforts to meet the recruitment and retention challenges.

74. In response, DoA advised that the Judiciary had launched the recruitment exercise for the CFI Judges in June 2018, and was planning to conduct the next round of recruitment exercises for District Judges and Permanent Magistrates by end 2018 and in the first half of 2019 respectively. DoA assured members that the Administration and the Judiciary Administration would monitor the results of the recruitment exercises at various court levels and assess the effectiveness of the upward pay adjustments following the 2015 Benchmark Study as well as the enhanced package of benefits and allowances introduced since April 2017.

75. Dr Junius HO noted that, against the establishment of 214 judicial posts, only 164 were substantively filled as of 31 March 2018. He was particularly concerned about the eight vacancies out of an establishment of 34 CFI posts. With a view to alleviating judicial manpower shortage, Dr HO suggested relaxing or lifting the prohibition against judges' return to private practice, which should help attract more legal practitioners in the private practice to join the Bench.

76. DoA replied that Dr Junius HO's suggestion of allowing judges to return to private practice would have a significant impact on a long established practice to maintain judicial independence. Therefore, it should be considered with due care and prudence.

Conclusion

77. After discussion, the Chairman concluded that the Panel supported the Administration's submission of the funding proposal to the Finance Committee for consideration.

VI. Any other business

78. There being no other business, the meeting ended at 6:55 pm.