

立法會
Legislative Council

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Panel on Administration of Justice and Legal Services

Minutes of meeting
Wednesday, 19 December 2018, 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 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
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon CHU Hoi-dick
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 attending : Hon Abraham SHEK Lai-him, GBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon CHAN Hak-kan, BBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP

Hon HO Kai-ming
Hon LAM Cheuk-ting
Hon SHIU Ka-fai
Hon Kenneth LAU Ip-keung, BBS, MH, JP
Dr Hon CHENG Chung-tai
Hon Vincent CHENG Wing-shun, MH

Members absent : Hon Martin LIAO Cheung-kong, SBS, JP
Hon Jimmy NG Wing-ka, JP

Public officers attending : **Agenda item III**

Department of Justice

Mr Alan SIU
Director of Administration and Development

Mr Wesley WONG, SC
Solicitor General

Mr Clifford TAVARES
Law Officer (Civil Law) (Acting)

Mr Peter WONG
Secretary, Law Reform Commission

Dr James DING
Law Officer (International Law) (Acting)

Miss LEE Sau-kong
Deputy Solicitor General (Policy Affairs) (Acting)

Agenda item IV

Miss Emma LAU
Judiciary Administrator

Mrs Connie NGAN
Assistant Judiciary Administrator
(Corporate Services)

Attendance by invitation : Agenda item IV

Mr Paul MITCHARD
Director of Career Planning and Professionalism
Faculty of Law of The Chinese University of Hong Kong

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

Miss Katherine CHAN
Council Secretary (4)6

Ms Emily LIU
Legislative Assistant (4)6

Action

I. Information papers issued since the last meeting

(LC Paper Nos. CB(4)294/18-19(01) - Consultation paper and
and (02) executive summary of
consultation paper on
Archives Law published by
the Law Reform Commission
of Hong Kong

LC Paper Nos. CB(4)294/18-19(03) - Consultation paper and
and (04) executive summary of
consultation paper on Access
to Information published by
the Law Reform Commission
of Hong Kong

LC Paper No. CB(4)324/18-19(01) - Information paper provided
by the Judiciary
Administration on allowances
for jurors and witnesses and
fees payable to adjudicators"

- LC Paper No. CB(4)337/18-19(01) - Joint letter from Hon James TO Kun-sun, Hon LAM Cheuk-ting and Hon HUI Chi-fung requesting for inviting the Department of Justice to explain its decision of not instituting prosecution against Mr LEUNG Chun-ying regarding the UGL case at a special meeting)

Members noted the above papers issued since the last meeting.

II. Items for discussion at the next meeting

- (LC Paper No. CB(4)323/18-19(01) - List of outstanding items for discussion

- LC Paper No. CB(4)323/18-19(02) - List of follow-up actions)

Request for inviting the Department of Justice to explain its decision of not instituting prosecution against Mr LEUNG Chun-ying at a special meeting

2. Upon invitation by the Chairman, Mr James TO, Mr LAM Cheuk-ting and Mr HUI Chi-fung briefed members on the request made in their joint letter (LC Paper No. CB(4)337/18-19(01)). They requested that the Secretary for Justice ("SJ") should be invited to attend before the Panel on Administration of Justice and Legal Services ("the Panel") at a special meeting to explain Department of Justice ("DoJ")'s decision of not instituting prosecution against the former Chief Executive ("CE") Mr LEUNG Chun-ying and Mr Holden CHOW ("the Prosecution Decision") as stated in DoJ's press statement made on 12 December 2018 ("the statement").

3. Mr LAM Cheuk-ting considered that the Prosecution Decision had aroused wide public concern and tarnished people's confidence in Hong Kong's rule of law. In order to remove any doubts that favouritism or conflict of interests was involved in making the Prosecution Decision, SJ should personally explain the detailed reasons behind the Prosecution Decision and why outside legal advice had not been sought in arriving at the above decision. Mr James TO and Mr HUI Chi-fung also highlighted some precedent examples in which the former SJs had explained DoJ's decisions of not instituting prosecution against certain cases of wide public concerns to the Panel, and urged that SJ should do the same over the Prosecution Decision.

4. The Chairman drew members' attention to the application for leave to judicially review the Prosecution Decision ("the JR application"), which was filed by a member of the public on 18 December 2018. She invited the Senior Assistant Legal Adviser ("SALA") to advise members on relevant issues to note when discussing the matter. SALA said that the JR application had been formally filed with the Court of First Instance and was a case pending in the court of law and, according to Rule 41(2) and Rule 43 of the Rules of Procedure, reference should not be made to a case pending in a court of law in such a way as, in the opinion of the Chairman of the Panel, might prejudice that case. The Chairman then invited members' views on the request in the joint letter.

5. Ir Dr LO Wai-kwok, Mr HO Kai-ming, Ms Alice MAK, Mr KWOK Wai-keung and Mr SHIU Ka-fai considered that the Panel, which normally deliberated and examined government policies, was not an appropriate platform to discuss individual cases, such as the Prosecution Decision. Ir Dr LO recalled that, at the Panel meeting in February 2018, Dr Junius HO had also requested the Panel to discuss DoJ's decision of not instituting prosecution against Mr Jimmy LAI in a case of suspected illegal offer and acceptance of political donations. After discussion, however, the Chairman decided that the subject should be discussed at a future meeting when DoJ's prosecution policy was discussed.

6. Dr Junius HO added that, besides the case mentioned by Ir Dr LO above, some Panel members had also requested for discussing other DoJ's prosecution decisions at previous Panel meetings, such as those against participants in the Occupy Central Movement, but the requests were also not entertained. He said that if the Prosecution Decision was to be discussed, those other requests should be given higher priority for discussion. Mr HO Kai-ming concurred with his view.

7. Ms Starry LEE, Mr Jeffrey LAM and Mr CHAN Kin-por considered that, as DoJ shall control criminal prosecutions free from any interference in accordance with Article 63 of the Basic Law, discussing the Prosecution Decision might be viewed as interfering DoJ's constitutional role. Mr CHAN Kin-por added that the decision of whether to seek outside legal advice in making its prosecution decisions should rest with DoJ, it was unreasonable to mandate DoJ to do so just because of the social status or political background of the persons involved.

8. The Deputy Chairman recalled that at the Panel meeting in October 2018, some members belonging to the pro-establishment camp commented that SJ had rarely given her views or responded to local affairs or issues of significant impact to the Hong Kong Special Administrative Region, and urged

that SJ should communicate more often with Legislative Council ("LegCo") Members and the general public. Therefore, he could not understand why the pro-establishment members would consider it unnecessary for SJ to explain the Prosecution Decision before the Panel.

9. Ms YUNG Hoi-yan said that DoJ had explained in the statement that the Prosecution Decision was made in accordance with the applicable laws and the Prosecution Code, in particular the two important considerations of, first, whether there was sufficient evidence to justify instituting prosecution and, second, whether the public interest required a prosecution to be pursued if there was sufficient evidence. DoJ had also explained in the statement why there was insufficient evidence to substantiate the criminal offences against Mr LEUNG Chun-ying and Mr Holden CHOW. In this connection, Ms YUNG considered that there was no need to invite SJ to explain before the Panel again.

10. Dr KWOK Ka-ki pointed out that the allegation against Mr LEUNG Chun-ying over his entering into an agreement with the UGL Limited and receiving payments thereunder during the time when he was CE was very serious. Mr CHAN Chi-chuen, Mr CHU Hoi-dick, and Mr Alvin YEUNG considered that the information provided by DoJ in the statement was far from enough to provide a satisfactory explanation to the public. Dr KWOK shared their views and they urged that SJ should personally explain the reasons behind the Prosecution Decision and why outside legal advice had not been sought at a special meeting of the Panel.

11. Dr CHENG Chung-tai also said that by explaining the Prosecution Decision at the Panel meeting, SJ would help clarify a number of issues besides the question of who had made the Prosecution Decision and the rationale, such as what constituted misconduct in public office in relation to declaration of interests, which legislation was relevant for dealing with alleged corruption cases involving CE, whether any loophole in the existing legislation and how to plug the loophole, etc.

12. Mr CHEUNG Kwok-kwan pointed out that it was an established principle in Hong Kong and other common law jurisdictions that the detailed reasons of prosecution decisions would not be disclosed but only the relevant criteria taken into consideration. By referring to the views expressed by the Director of Public Prosecutions of England, Barbara Mills, QC, Mr CHEUNG said that the giving of reasons in details for instituting or not instituting prosecution might adversely affect the administration of justice, especially in the case of a decision not to prosecute where public discussion might amount to a public trial without the safeguards of the criminal justice process.

13. Notwithstanding Mr CHEUNG Kwok-kwan's view, Mr CHU Hoi-dick said that members should not ignore the precedent examples in which former SJs had attended meetings of the Panel to explain DoJ's decisions of not instituting prosecutions against other cases of wide public concerns. Dr Fernando CHEUNG also said that, apart from the wide public concerns that the Prosecution Decision had aroused, it was the public's right to know the rationale behind the decision. Therefore, it was necessary for SJ to attend before the Panel. Furthermore, requesting SJ to attend the Panel meeting to explain the decision should not be considered as interfering DoJ's decision-making since the Prosecution Decision had already been made.

14. Mr WONG Kwok-kin said that the grievances of members in objection to the Prosecution Decision over the insufficient information provided by DoJ had rightly reflected the fact that there was actually no evidence in establishing the criminal offences against Mr LEUNG Chun-ying and Mr Holden CHOW. He said that this was also supported by the Democratic Party's own futile search for evidence against Mr LEUNG Chun-ying in the United Kingdom and Australia.

15. Ms Alice MAK and Mr KWOK Wai-keung said that Members might disagree with different DoJ's decisions of not instituting prosecutions against certain cases out of different political inclinations, as Ir Dr LO Wai-ki and Dr Junius HO had pointed out above. Allowing the Panel to discuss a prosecution decision whenever it was raised by a member would turn the Panel into a place for staging political shows by individual Members, which would be a waste of public resources and time.

16. Mr CHUNG Kwok-pan, Mr Jeffrey LAM and Mr SHIU Ka-fai considered that even if SJ attended before the Panel, she could not give further comment or details on the Prosecution Decision in view of the JR application and therefore, it would be meaningless to invite SJ to a special meeting now. Mr CHUNG suggested that the Panel might follow up the matter after the JR application had been dealt with by the court. He also considered that SJ could explain to the public in any setting about DoJ's prosecution decision, but not restricted to LegCo.

Conclusion

17. The Chairman indicated that she had tried to contact SJ on members' concerns about the Prosecution Decision but in vain. She also said that, as some members had mentioned earlier, individual Panel members of different political camps had previously requested the Panel to discuss DoJ's prosecution decisions on various occasions in the past. While some former SJs did explain

certain DoJ's prosecution decisions at Panel meetings in the past, it was no longer the practice in recent years.

18. The Chairman pointed out that in recent years, no special meeting was arranged for the discussion of individual DoJ's prosecution decisions. However, members could still raise their concerns over such prosecution decisions for discussion at Panel meetings when the subject of "Prosecution Policy" was discussed. In view of the above, the Chairman considered that the Panel might invite SJ and the Director of Public Prosecutions of DoJ ("DPP") to discuss the subject on "Prosecution Policy" at a regular meeting of the Panel.

19. Mr Paul TSE and Mr James TO concurred with the Chairman's view. Mr TSE considered that the subject on "Prosecution Policy" could entertain the requests of various members. He also hoped that SJ would explain to the Panel on who made the Prosecution Decision and the rationale behind.

Meeting in January 2019

20. After discussion, the Chairman decided that the Panel would discuss the following items at the next regular meeting to be held on 28 January 2019:

- (a) Prosecution policy of DoJ (SJ and DPP to be specifically invited);
- (b) Review of duty lawyer fees; and
- (c) Biennial review of criminal legal aid fees, prosecution fees and duty lawyer fees.

Visit to the Judiciary in May 2019

21. The Chairman informed members that arrangement was being made for the Panel to visit the Judiciary in the morning of 21 May 2019. In the past, the Panel had visited the Judiciary on several occasions which provided valuable opportunities for members to exchange views with the Chief Justice of the Court of Final Appeal ("CFA") ("CJ"), other senior judicial officers and the Judiciary Administrator ("JA"). She asked members to reserve time for joining the visit where possible. Members also agreed that non-Panel members be invited to join the visit following the past practices.

22. The Chairman said that the Clerk would liaise with the Judiciary Administration ("Jud Adm") on the details of the visit. Once the visit programme had been finalized, Panel members and non-Panel members would be invited to enroll for the visit.

(Post-meeting note: Members were invited to enroll for the visit via LC Paper No. CB(4)756/18-19 on 16 April 2019.)

III. Proposed creation of one permanent post of Principal Government Counsel, one permanent post of Deputy Principal Government Counsel, one supernumerary post of Deputy Principal Government Counsel and upgrading of one Assistant Principal Government Counsel to Deputy Principal Government Counsel post in the Department of Justice

(LC Paper No. CB(4)323/18-19(03) - Administration's paper on proposed creation of one permanent post of Principal Government Counsel, one permanent post of Deputy Principal Government Counsel, one supernumerary post of Deputy Principal Government Counsel and upgrading of one Assistant Principal Government Counsel to Deputy Principal Government Counsel in the Department of Justice)

23. Director of Administration and Development of DoJ briefed members on the staffing proposals of DoJ ("the staffing proposals") as set out in the Administration's paper, including:

- (a) the creation of one permanent post of Principal Government Counsel ("PGC") (DL3) in SJ's Office ("SJO") to strengthen support in enhancing Hong Kong's role as an ideal hub for deal making and a leading centre for international legal and dispute resolution services in the Asia-Pacific Region;
- (b) the creation of one permanent post of Deputy Principal Government Counsel ("DPGC") (DL2) in the Law Reform Commission ("LRC") Secretariat of the Legal Policy Division of DoJ ("LPD") to strengthen the legal support provided to LRC to expedite its work in making and implementing recommendations on reform of the law;

- (c) the upgrading of one Assistant Principal Government Counsel (DL1) post to DPGC (DL2) in the Policy Affairs Sub-division of LPD to cope with the increased level of variety, breadth, depth, and complexity of the existing and additional workload; and
- (d) the creation of one supernumerary post of DPGC (DL2) for a period of five years in the Policy Affairs Sub-division of LPD to cope with the upsurge in workload arising from new and existing projects.

Staffing proposal in the Secretary for Justice's Office

24. The Deputy Chairman noted that certain places in the region, such as Singapore, had been forging ahead in promoting their international legal and dispute resolution services to other parts of Asia or in the traditional markets of the West, and were proactive in attracting reputable international dispute resolution institutions to provide services or set up offices within their jurisdictions.

25. Drawing from his recent experience of visiting the American Arbitration Association ("AAA") in New York, the Deputy Chairman said that AAA was not aware of the Legal Hub project being taken forward by the Administration to promote Hong Kong's legal and dispute resolution services, while it had been invited to set up office in Singapore. The Deputy Chairman enquired what actions would be taken, especially with the proposed PGC in SJO, to attract more internationally reputable institutions to provide arbitration services in Hong Kong.

26. In response, Solicitor General of DoJ ("SG") explained that DoJ had spared no effort in promoting Hong Kong's legal and dispute resolution services. As regards the Legal Hub project, 17 reputable local, regional and international law-related organizations selected under the Stage 1 and Supplementary application exercises had responded favourably to the offer of space in the Legal Hub, whereas a Stage 2 application exercise would be launched later. In the longer run, DoJ would sponsor and support hosting the world-renowned International Council for Commercial Arbitration Congress 2022, which would enhance the status of Hong Kong as a leading centre for international legal and dispute resolution services.

27. SG further said that there was a pressing need to implement a number of key initiatives that went beyond the mere "promotional events" with a view to enhancing Hong Kong's presence, reputation and influence as a provider of deal making as well as dispute resolving services. In this connection, DoJ considered it necessary to create the proposed PGC post in SJO to support SJ in

taking up the strategic coordination work; international, regional, mainland and local liaison work; as well as the overall policy development in respect of dispute resolving (including arbitration and mediation) and deal making services.

28. Dr Junius HO indicated support for the staffing proposals. He noted from the organization chart for the proposed PGC post in SJO that the incumbent would be supported by the Mediation Team ("MedT") of the Civil Division ("CD"), Arbitration Unit ("ArbU") of LPD and the International Organisation and Legal Cooperation team ("IOLCT") in the Treaties & Law Unit of the International Law Division ("ILD"). Noting that CD, LPD and ILD were under the supervision of respective Law Officers, Dr HO was concerned whether the line of command for the proposed PGC in SJO would overlap with those of the Law Officers in their management of mediation and arbitration work in DoJ.

29. In response, SG explained that a Joint Dispute Resolution Strategy Office ("JDRSO") comprising MedT and ArbU had been established in September 2016 to enhance the overall coordination of the mediation and arbitration work in DoJ. JDRSO was currently under the general supervision of SG. However, without a dedicated PGC to oversee MedT and ArbU, placing the supervision, coordination of work, management of the manpower and resources of the two teams under two separate Divisions was not conducive enough to achieving the synergy which could best be generated. In this connection, the proposed PGC would be responsible for leading JDRSO which would be joined by IOLCT and renamed as Inclusive Dispute Avoidance and Resolution Office ("IDAR Office").

30. SG further said that the proposed PGC would support SJ in steering the key dispute resolution initiatives and projects and would be supported by MedT, ArbU and IOLCT. In this connection, the respective PGCs in CD and LPD who were currently overseeing MedT and ArbU as part of their portfolios would concentrate on supervising the operation of respective dispute resolution regimes, and the implementation of recurrent projects. The proposed arrangement was essential for enhancing the overall coordination of key dispute resolution initiatives and special projects as well as ensuring that the regular mediation and arbitration portfolios could be taken forward in a more efficient, effective and timely manner.

31. SG added that, since SJ was taking the lead in many of the new initiatives and special projects and was giving her personal attention to the planning and implementation work as well as liaison work with the relevant organizations, it was necessary to create the proposed PGC post to provide SJ with the necessary high-level and timely support.

32. The Chairman was in support of the staffing proposals. However, she noted that the proposed PGC in SJO would liaise with other jurisdictions and the Mainland authorities in exploring opportunities for developing Hong Kong's dispute resolution and deal making services, and planning joint projects (including negotiating and concluding the related necessary arrangements) with them. As PGC of SJO would have to deal with complex and important legal matters in discharging the above duties, the Chairman enquired whether the incumbent would have to possess specialized knowledge in international law and an international outlook.

33. SG replied that, owing to the vast differences in legal systems between Hong Kong and some jurisdictions, PGC of SJO would need to cope with a whole host of complex legal issues in the course of promoting and developing Hong Kong's mediation and arbitration services to such jurisdictions with the necessary support provided by MedT, ArbU and IOLCT through IDAR Office. In the light of this, there was a strong need to create the proposed PGC post in SJO to coordinate the support rendered by respective units under IDAR Office, as well as assist SJ in handling the above legal issues.

34. Ir Dr LO Wai-kwok supported in principle the staffing proposals, in particular the proposed PGC post in SJO in view of the need for Hong Kong to capitalize on the global opportunities offered under the Belt and Road Initiative. He considered that this would not only benefit the legal professionals, but also various other professional disciplines such as accounting, engineering and surveying. However, he noted with concern that Hong Kong had dropped out of the top three most preferred seats of arbitration in the 2018 International Arbitration Survey conducted by the Queen Mary University of London ("the Survey"). In this connection, Ir Dr LO enquired whether the Administration had identified the reasons for that, assessed the strengths and weaknesses of Hong Kong's dispute resolution services, and considered measures to recover lost ground.

35. In reply, SG advised that the Administration was fully aware of the keen competition from other international legal and dispute resolution services centres in the region for the fast growing opportunities arising from the Belt and Road Initiative. However, in the past few years, DoJ had significantly stepped up its promotion efforts to jurisdictions beyond the Belt and Road Initiative, such as in countries of the Asia-Pacific Economic Cooperation ("APEC"), with a view to promoting Hong Kong as a platform for conducting dispute resolution.

36. SG said that, after reflecting on the outcome of the Survey and DoJ's efforts in recent years, the Administration came to the view that the Survey might have reflected more on the users' perception about rather than an actual

drop in the quality of Hong Kong's legal and dispute resolution services. To address the perception issues, the Administration considered it necessary to bring its efforts to a new level by systematically establishing and enhancing Hong Kong's presence, reputation and influence in the Mainland and other parts of Asia, as well as other jurisdictions on top of the promotional activities that the Administration had been organizing on a regular basis. In this regard, there was a strong and imminent need to create the proposed PGC post in SJO to coordinate the efforts of relevant divisions, thereby achieving synergy in formulating a comprehensive and sustainable strategy to promote Hong Kong's legal and dispute resolution services.

37. Ir Dr LO Wai-kwok further enquired whether DoJ would improve its networks with certain relevant organizations and parties in order to promote Hong Kong's legal and dispute resolution services. SG replied that to promote Hong Kong's services locally and internationally, DoJ had been in cooperation with a number of organizations and parties, including the Hong Kong Trade Development Council, InvestHK, the Hong Kong Economic and Trade Offices, APEC and the United Nations. DoJ would continue its efforts to enhance Hong Kong's role as a leading centre for international legal and dispute resolution services in the Asia-Pacific Region.

Staffing proposals in the Legal Policy Division of the Department of Justice

38. The Chairman noted that the workload of LRC had arisen from various law reform proposals (including archives law and access to information), the follow-up work related to the growing number of the LRC reports in implementation, and new promotional efforts. She asked how the proposed DPGC in the LRC Secretariat could help take up the existing workload.

39. In response, SG said that SJ had briefed the Panel in December 2017 on the preliminary outcome of the study conducted by LRC and consulted members on the options and preliminary conclusions from the study to assist DoJ in considering the way forward. The preferred option of LRC, i.e. to maintain the current Commission and sub-committee structure of LRC but enhance the LRC Secretariat support, was generally supported by the Panel.

40. SG further explained that the directorate manpower of the LRC Secretariat had remained unchanged for over 20 years. With the proposed additional DPGC and other non-directorate posts proposed in the Administration's paper, the LRC Secretariat would be able to adopt a research teams approach for all LRC projects and a modified co-secretaries approach as needed, so as to expedite the work of each of the sub-committees serviced by individual teams. Furthermore, to cope with the changes and challenges brought by globalization, as well as enhance efficiency of the work of LRC and

the law reform process in Hong Kong, SG said that it was essential to create an additional DPGC post and other non-directorate posts as set out in the Administration's papers.

Other comments on the staffing proposals of the Department of Justice

41. The Chairman considered that DoJ should from time to time review its manpower required to manage the increasing workload, in order to maintain a high level of efficiency and effectiveness. Apart from the staffing proposals, she also urged the Administration to study how DoJ's manpower could be enhanced to face the changes and challenges brought by globalization in the legal field, such as application of artificial intelligence to legal services.

Conclusion

42. The Chairman concluded that the Panel supported DoJ's submission of the staffing proposals to the Establishment Subcommittee for further consideration.

IV. Employment opportunities and system in the Judiciary for law students and legal practitioners

(LC Paper No. CB(4)323/18-19(04) - Judiciary Administration's paper on employment opportunities and system in the Judiciary for legal practitioners and law students)

Briefing by the Judiciary Administrator

43. JA briefed members on the employment opportunities and system in the Judiciary for legal practitioners and law students. She explained that, apart from engaging members of the legal profession for substantive appointments as judges and judicial officers ("JJOs") and for judicial duties on a temporary basis (i.e. deputy JJOs), the Judiciary also employed legal practitioners and legally qualified assistants to provide legal and professional support to JJOs for their discharge of judicial duties through the following pathways:

- (a) The Scheme on Judicial Assistants for CFA ("JDA Scheme");
- (b) The Scheme on Judicial Associates for the High Court ("HC") ("JudA Scheme"); and
- (c) Professional staff for the Executive Body of the Judicial Institute.

44. JA said that the substantive appointments of judges of the Court of First Instance of HC ("CFI Judges"), District Judges ("DJs") and Permanent Magistrates ("Perm Mags") were made through open recruitment exercises and, as CJ had emphasized, it was important to maintain the highest standards of JJOs recruited to the Judiciary. She also pointed out that more than half of those JJOs appointed from open recruitment exercises were legal practitioners from outside the Judiciary.

Views of deputations

45. The Chairman invited Mr Paul MITCHARD, Director of Career Planning and Professionalism of the Faculty of Law of The Chinese University of Hong Kong, to give his views on the subject.

46. Mr Paul MITCHARD said that the law schools/faculties of Hong Kong's universities might not have dedicated staff to provide career planning services for their law graduates and, therefore, it was difficult to track all career openings for them. In this connection, if the Judiciary could provide information regarding JDA recruitment to respective law faculties, it would facilitate its timely dissemination to the law graduates interested in joining the JDA Scheme.

Discussion

The Scheme on Judicial Assistants for the Court of Final Appeal

47. The Chairman declared that she was teaching at the Law School of the City University of Hong Kong. She enquired about the entry requirements and remuneration for the JDA post. In reply, JA advised that law graduates who had/would have obtained a Postgraduate Certificate in Laws ("PCLL") were eligible to apply for appointment as JDAs through open recruitment exercises conducted by the Judiciary annually. JDAs were normally recruited on one-year contracts to provide assistance to the appellate judges in CFA on legal researches and other work of the court.

48. Assistant Judiciary Administrator (Corporate Services) advised that the prevailing monthly salary of the JDA post was \$62,612. JA said that the JDA Scheme provided a valuable experience for the fresh law graduates and the salary was very attractive to them. Both the judges of CFA and the JDAs employed considered that the JDA Scheme was working very well.

49. The Chairman said that it was her observation that most of the JDAs appointed were top law students with outstanding academic results. In this connection, she asked about the selection criteria, in particular whether

academic result was the most important criterion for appointment to JDAs. JA replied that a selection board comprising judges would be formed to identify suitable candidates for appointment as JDAs through interviews. She added that, based on past experience, many applicants for the post possessed outstanding academic results.

50. The Chairman said that, given the attractiveness of the JDA Scheme, she shared the view of Mr MITCHARD that the Judiciary should step up its promotion and advertise the position to all PCLL students so that they would be aware of this career option. She also considered that the selection criteria should be made known to potential applicants for the position.

51. In reply, JA advised that before placing job advertisements regarding the JDA vacancies on newspapers and the Judiciary's website, the Jud Adm would send letters with details about the positions to the three law schools for their information, and the Judiciary did receive many applications for the JDA position every year.

The Scheme on Judicial Associates for the High Court

52. The Chairman asked whether JudA was a full-time post, whether JudAs' contracts were renewable, and about the actual years of post-qualification experience ("PQE") possessed by the JudAs appointed.

53. In response, JA advised that JudAs were appointed on full-time contract terms and the appointees were required to cease their private practice before taking up the employment. She added that the JudA Scheme was divided into two streams: JudAs (General) provided assistance in civil appeal cases and legal research in HC and the Judiciary while JudAs (Criminal Appeals) provided assistance to the Justices of Appeal in hearing criminal appeals. Applicants for the positions must be solicitors or barristers admitted/called in Hong Kong or any other common law jurisdiction and have the relevant PQE as a solicitor or barrister.

54. JA further said that, having regard to operational needs, individual JudAs were appointed on a one or two-year contract and their terms might be renewable. After completing their contracts, some JudAs opted for renewal of employment contract with the Judiciary while some preferred returning to work in the private practice.

55. The Chairman enquired about JudAs' salaries and the reasons for the difference between theirs and JDAs' salaries. In reply, AJA(CS) advised that the prevailing monthly salary of JudA (General) ranged from \$68,730 to \$82,425, and that of JudAs (Criminal Appeals) ranged from \$64,055 to \$82,425.

JA said that the salary starting points for individual JudAs would depend on their years of PQE. She also explained that the monthly salary of JudA was higher than that of JDA in general because JudA required several years of relevant working experience while fresh graduate might be recruited as JDA.

Expanding the Schemes on Judicial Assistants and Judicial Associates

56. The Deputy Chairman said that the legal sector fully supported the JDA and JudA Schemes as they provided valuable working experience in the Judiciary for law graduates and legal practitioners respectively. The schemes provided legal and professional support to judges in CFA and HC in the discharge of their judicial duties. In this connection, he hoped that the Judiciary could expand the schemes to recruit more JDAs and JudAs.

57. JA replied that the Judiciary had been expanding the JDA and JudA Schemes in recent years. In January 2019, for example, two more JudAs would assume duty which would increase the number of JudAs to 14. The Judiciary also planned to review the two schemes and would actively consider the possibility of recruiting more JDAs and JudAs. She added that the next recruitment exercises for the above two positions would be held in 2019.

58. The Chairman said that through the JDA and JudA Schemes, the Judiciary had recruited high quality legal practitioners and law graduates to provide assistance to judges in CFA and HC. She considered that, with their valuable experience gained from these schemes, JDAs and JudAs should be good sources of judicial manpower for appointment as JJOs in future. In this connection, the Chairman asked whether the Judiciary had kept statistics about the number of JDAs and JudAs who had joined the workforce of the Judiciary as JJOs after completion of their JDA and JudA employment contract.

59. JA explained that the JDA Scheme and the JudA Scheme had only been launched for about eight and three years respectively, while the appointees as JJOs should meet the minimum years of PQE since becoming qualified as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction. She further said that while the statutory minimum years of PQE for appointment as a judge of HC, a DJ and Magistrate were 10, 5 and 5 years respectively, the average years of PQE possessed by the CFI Judges, DJs and Perm Mags appointed were 25, 18 and 14 years respectively.

60. In view of the above, JA said that a relative long time would be required to accumulate the statistics requested by the Chairman. She added that according to her understanding, the majority of JDAs would join legal practice after completion of their one-year contract, with more entering the barrister stream. JA added that the Judiciary had so far conducted one to two open

recruitment exercises for the JudA post, and the recruitment exercise would be conducted regularly in the future, having regard to operational needs.

61. The Chairman hoped that lawyers with outstanding performance in the private practice could be attracted to work in the Judiciary to help relieve the manpower shortage in the Judiciary. She also requested the Judiciary to keep track on the career paths of JDAs who had completed their contracts with a view to evaluating the effectiveness of the JDA Scheme.

Legally qualified staff recruited to the Judicial Institute

62. Dr Junius HO enquired about the operation and functions of the Judicial Institute as mentioned in the paper provided by Jud Adm. JA advised that the Judicial Institute was established in the Judiciary to provide continued support to serving JJOs at all levels of court on matters relating to judicial training, legal research and production/updating of manuals and directions, etc. for enhancing their judicial skills and knowledge.

63. The Chairman and Dr Junius HO enquired about the roles of the legally qualified professionals other than JJOs in the Judicial Institute. In reply, JA clarified that legally qualified professionals with relevant experience in legal profession training were recruited as the Directors and Counsel of the Executive Body of the Judicial Institute. Engaged through open recruitment exercises, they provided dedicated legal and research support to JJOs and assisted in the planning and provision of judicial training in various areas, but did not conduct training themselves.

64. The Chairman asked about the background of trainers in the Judicial Institute, as well as the form of engagement and remuneration. In response, JA said that training conducted by the Judicial Institute was mostly taught by judges. Besides, the Judiciary also engaged international professionals to provide training in the form of talks, forums, workshops, etc.

65. JA added that the Judicial Institute was a relatively new set-up under the Judiciary. In 2018, the Judiciary had engaged more legally qualified professionals to provide support in the Judicial Institute. The Judiciary was planning to expand and develop the Judicial Institute in the future to meet the training needs of JJOs.

66. The Chairman and Dr Junius HO enquired about the types of training programmes offered by the Judicial Institute and whether there were reports on the work of the Judicial Institute. Dr HO also asked whether there was a benchmark to measure the effectiveness of the training activities offered by the

Judicial Institute and whether judges were mandated to attend the training activities.

67. JA replied that the Judicial Institute organized a wide range of training activities for JJOs, such as case management, talks, workshops and seminars. All judicial training activities organized by the Judicial Institute in a particular year were reported in the relevant annual report of the Judiciary. She also informed members that judges were given "protected time" to take part in judicial education which was counted against their duty hours besides attending court hearings or handling other judicial duties.

68. Dr Junius HO asked about the timeframe for implementing e-filing system by the courts to enable perusal of documents by electronic means in court proceedings. He considered that, in that regard, the Judicial Institute should provide appropriate training to JJOs on handling electronic court documents.

69. In reply, JA advised that an Information Technology Strategy Plan was being implemented by the Judiciary by phases and its key initiatives included, among other things, enabling and encouraging electronic services for various types of transactions and enabling electronic court records. JA further advised that legislative amendments were required to provide the proper legal backing for the use of an electronic mode for transactions in court businesses, which were under preparation. The Administration and Jud Adm intended to consult the Panel in 2019 on the proposed legislative amendments for the first phase of implementation.

V. Any other business

70. There being no other business, the meeting ended at 6:40 pm.