立法會
Legislative Council

LC Paper No. CB(4)36/19-20
(These minutes have been seen by the Administration)

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Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 24 June 2019, at 4:00 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 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 Hon YUNG Hoi-yan Hon CHEUNG Kwok-kwan, JP Hon HUI Chi-fung
Member attending	**:**	Dr Hon Elizabeth QUAT, BBS, JP
Members absent	**:**	Hon Paul TSE Wai-chun, JP Hon CHUNG Kwok-pan Dr Hon Junius HO Kwan-yiu, JP Hon Holden CHOW Ho-ding

Public officers attending	:	**Agenda item III** Department of Justice Miss LEE Sau-kong Deputy Solicitor General (Policy Affairs) (Acting) Miss Janice KWAN Senior Government Counsel **Agenda item IV** Ms Teresa CHENG, SC Secretary for Justice Chairman, The Law Reform Commission of Hong Kong Ms Adeline WAN Acting Secretary The Law Reform Commission of Hong Kong Mr Byron LEUNG Deputy Secretary The Law Reform Commission of Hong Kong **Agenda item V** Judiciary Administration Miss Patricia SO Deputy Judiciary Administrator (Development) Mr David LAU Assistant Judiciary Administrator (Development)2
Attendance by invitation	:	**Agenda item III** Hong Kong Bar Association Mr Richard KHAW, SC Mr Michael YIN

Faculty of Law, The University of Hong Kong

Mr CHOW Wai-shun
Head, Department of Professional Legal Education

The Undergraduate Law Society of the Student Union, The Chinese University of Hong Kong

Miss Chie TONG Chin-wai

School of Law, City University of Hong Kong

Dr Peter CHAN
Assistant Professor

Dr DING Chunyan
Assistant Dean

Faculty of Law, The Chinese University of Hong Kong

Prof Dennis HIE
Professional Consultant

Agenda item V

Hong Kong Bar Association

Ms Kirsteen LAU

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. Information papers issued since the last meeting

Members noted that there was no information paper issued since the last meeting.

II. Items for discussion at the next meeting

(LC Paper No. CB(4)1007/18-19(01) - List of outstanding items for discussion

LC Paper No. CB(4)1007/18-19(02) - List of follow-up actions)

2. Members noted that the following items would be discussed at the next regular meeting to be held on 17 July 2019:

(a) Latest developments in international arbitration for Hong Kong;

(b) Work of the Coroner's Court; and

(c) Mediation initiatives of the Department of Justice ("DoJ").

(*Post-meeting note:* On the instruction of the Panel Chairman, members were informed on 2 July 2019 via LC Paper No. CB(4)1045/18-19 that the July meeting was cancelled.)

3. The Chairman reported that on 3 June 2019, members were invited vide LC Paper No. CB(4)954/18-19 to indicate whether they supported holding a joint meeting with the Panel on Security and conducting a public hearing on the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 ("the Fugitive Offenders Bill") as suggested by some members. With the exception of the Chairman, 17 members responded to the circular. The outcome was that seven members had indicated agreement and 10 members had indicated objection. She said that no further action would be taken on the suggestion. Members raised no other views.

III. Legal education and training in Hong Kong

Meeting with deputations and the Administration

(LC Paper No. CB(4)1007/18-19(03)	-	Administration's paper on legal education and training in Hong Kong
LC Paper No. CB(4)1029/18-19(01)	-	Letter dated 19 June 2019 from The Law Society of Hong Kong
LC Paper No. CB(4)1007/18-19(04)	-	Paper on legal education and training in Hong Kong prepared by the Legislative Council Secretariat (updated background brief)
LC Paper No. CB(4)1008/18-19(01)	-	Submission from the Undergraduate Law Society of the Student Union of The Chinese University of Hong Kong)

Briefing by the Administration

4. Deputy Solicitor General (Policy Affairs) (Acting) ("DSG(P)(Ag)") of DoJ briefed members on the related development since June 2018 when the Administration introduced the final report of the consultants of the Standing Committee on Legal Education and Training ("SCLET") on the comprehensive review on legal education and training in Hong Kong ("Final Report").

Views of the Hong Kong Bar Association and other deputations

5. The Chairman declared that she was teaching at the School of Law of the City University of Hong Kong ("City U"). She reminded representatives of the Hong Kong Bar Association ("the Bar Association") and other deputations that, when addressing the Panel on Administration of Justice and Legal Services ("AJLS Panel") at the meeting, they were not covered by the protection and immunity under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), and their written submissions were also not covered by the Ordinance. In total, four deputations presented their views, a summary of which is in the **Appendix**. Members also noted from The Law Society of Hong Kong ("the Law Society")'s letter (LC Paper No. CB(4)1029/18-19(01))

that it was in the process of assessing the feasibility of the centralized examination proposals internally and were not yet in a position to share any concrete details publicly.

Discussion

Increasing number of lawyers in Hong Kong

6. In response to the views of some deputations that more opportunities should be provided to law graduates the number of which had been increasing, DSG(P)(Ag) said that DoJ had been making efforts to cater for the changing legal landscape in Hong Kong. To enhance opportunities for law graduates and legal practitioners, DoJ had been actively promoting Hong Kong as a leading international legal and dispute resolution service centre through different channels. It had also been exploring expanded opportunities for the Hong Kong legal profession under various initiatives such as the Mainland and Hong Kong Closer Economic Partnership Arrangement and the Guangdong-Hong Kong-Macao Greater Bay Area ("Greater Bay Area") Development. Besides, DoJ had been working closely with the Hong Kong legal professional bodies and the dispute resolution sector to enhance the promotional efforts in the Greater Bay Area and the other areas of the Mainland.

7. DSG(P)(Ag) further said that the current number of local barristers and solicitors was about 11 000 whereas the population in Hong Kong was about 7.8 million. On a rough calculation, the ratio of lawyers to population was about 1.47 lawyers per 1 000 people. Compared with countries having a relatively advanced international legal services sector, such as the United Kingdom, this suggested that Hong Kong still had room for increasing the number of lawyers.

8. The Chairman invited representatives from the three law schools to share their views on how they could help address the issue regarding the increasing number of lawyers. Mr CHOW Wai-shun, Head of the Department of Professional Legal Education, Faculty of Law of The University of Hong Kong ("HKU") considered that whether the market could absorb all graduates of the Postgraduate Certificate in Laws ("PCLL") programme should be taken into account. He said that, according to the rough figure on the number of trainee solicitors, it seemed that the law firms in Hong Kong could not absorb all PCLL graduates.

Career prospect of law graduates and measures to attract aspiring lawyers to study law programmes

9. The Chairman said that, while DoJ considered that there might be room for increasing the number of lawyers in Hong Kong, she was concerned about the career prospect of junior lawyers whose competitive edge was far lagged behind the experienced lawyers so that the majority of job opportunities went to the latter. In response, Mr CHOW Wai-shun said that HKU had not received feedback from its law graduates about their difficulties in finding job after graduation. However, he was aware that the career paths taken by them were quite diverse. While some graduates of the PCLL programme chose further studies after graduation, some would work as trainee solicitors in the legal department of large enterprises, and some who could not get a trainee solicitor contract shifted to enter the barrister stream, etc.

10. The Chairman also expressed concern that graduates from double degree programmes which included a law degree were less determined to enter the legal profession than graduates who only took LLB programme. For example, she was aware that graduates from the Bachelor of Social Sciences (Government and Laws) ("BSocSc (Govt & Laws)"), which was a double degree programme offered by the Faculty of Law of HKU, tended to develop their careers in politics rather than law.

11. Mr CHOW Wai-shun said that graduates from the double degree programmes with law might not apply for the PCLL programme, hence they would not deprive the opportunities of other applicants for the programme who wanted to enter the legal profession. As far as he was aware, about half of the graduates from the double degree programmes offered by the Faculty of Law of HKU had enrolled in the PCLL programme and would like to enter the legal profession. Mr CHOW added that by comparing the three double-degree undergraduate programmes under the Faulty of Law of HKU, the ratio of graduates from BSocSc(Govt & Laws) programme who enrolled in the PCLL programme was relatively low.

12. Dr Peter CHAN, Assistant Professor of City U, said that the School of Law of City U did not offer double degree undergraduate programmes at the moment but was planning to offer such programmes. He undertook to take into account the views of the Chairman in planning for the programmes.

13. In response to the Chairman's concerns, DSG(P)(Ag) considered that the knowledge acquired from LLB studies was useful for general purposes and could be applied in a wide range of careers apart from the legal profession.

Admission to the Postgraduate Certificate in Laws programmes

14. The Chairman expressed concern that some graduates of the PCLL programme did not choose to work as lawyers. As a result, the knowledge learnt might get lost and the legal sector might not be able to bring in talented law graduates. As PCLL programme places were limited and under keen competition, she considered that law schools should identify through interviews those applicants who had aspiration to be a lawyer and offer places only to them.

15. Dr Peter CHAN said that it was not easy to get a place to study the PCLL programme in City U and so graduates would normally practise as lawyers, though some might need more time to find a job in the legal profession. He said that he had never come across any graduate from the PCLL programme who indicated that he/she would not enter the legal profession.

16. The Chairman noted that HKU offered both part-time and full-time PCLL programmes whereas City U and The Chinese University of Hong Kong ("CUHK") only offered full-time PCLL programmes. She considered that the three law schools should study how the curriculum of both part-time and full-time PCLL programmes could keep pace with the development trend of the legal sector.

17. The Chairman enquired whether those who aspired to be a lawyer but did not fully meet the academic requirement for admission to the PCLL programme would be given opportunities to study in the programme. She also asked about the selection criteria for admission to the programme.

18. Mr CHOW Wai-shun said that in the screening of candidates for interview and admission to the PCLL programme, apart from academic performance, HKU also offered discretionary places based on a balanced consideration of candidates' legal knowledge and their full-time working experience, in particular those who had two-year relevant legal experience or more.

19. Dr Peter CHAN said that City U would grant interview opportunities to those applicants who were not competent in academic performance but with relevant working experience in the legal sector. He advised that one of the criteria of assessing suitable candidates was whether they could demonstrate their determination to become a lawyer.

20. Prof Dennis HIE, Professional Consultant, Faculty of Law, CUHK, added that in view of some comments made by the legal sector regarding CUHK's PCLL programme, CUHK was actively considering a new mechanism

by setting aside 10 places for granting interview opportunities to those applicants who could not demonstrate an academic merit but had practical working experience in the legal sector. It targeted to introduce the new mechanism, if appropriate, from September 2020.

21. The Chairman enquired about the numbers of law graduates applying for and admitted to the PCLL programmes run by the three universities and success rates. In reply, Mr CHOW Wai-shun said that the respective figures on the applications for and admission to the PCLL programmes run by the three universities had been included in the respective PCLL annual reports which were attached to the annual report of SCLET. As far as he could remember, the total number of applications for the PCLL programmes run by the three law schools every year remained quite steady, i.e. about 1 200 to 1 300 (including full-time and part-time PCLL programmes and the number was higher at times when there was double cohort arising from the implementation of the new academic structure in previous years), and the number of those who were successfully admitted had gradually increased to about two third of applications.

22. Prof Dennis HIE advised that the Faculty of Law, CUHK, received 216 applications which designated its PCLL programme as the first choice in the academic year 2018-2019 and made 167 offers of which 156 were accepted by candidates. The success rate was about 72%. He said that the number of PCLL programme places offered by CUHK was the smallest among the three law schools. The basis for admission to the PCLL programme was academic merit and no interview would be conducted.

Curriculum of law programmes

23. Mr Martin LIAO referred to Recommendation 4.4 of the Final Report which stated that "the Universities should each review their academic offerings annually, with a view to ensuring that students undertaking the PCLL courses are not required to learn (and be examined upon) significant amounts of substantive law in the vocational stage already studied at the academic stage." He asked whether the three law schools had considered the above suggestion and what measures had been or would be taken, including whether the mandatory course requirements in LLB or Juris Doctor ("JD") for admission to the PCLL programme would change.

24. Mr CHOW Wai-shun said that during HKU's discussion of the Final Report with other stakeholders, the Bar Association had made some suggestions on the two courses on Civil Procedure and Criminal Procedure ("the two courses"). He advised that at present, the two courses were electives in LLB and JD programmes and were pre-requisite courses for admission to the PCLL programme, and the Faculty of Law of HKU had been reviewing the curricula

of its programmes for improvement. Among other improvement measures, the Faculty was exploring including the two courses in the PCLL programme but removing them as pre-requisite courses for admission to the programme, while retaining them as elective courses in LLB and JD programmes.

25. Mr CHOW Wai-shun added that, since many applicants for the PCLL programme were law graduates from overseas universities who might not have knowledge about Hong Kong's civil and criminal procedures, the above measures would help them gain the relevant knowledge in the PCLL programme. Prof Dennis HIE said that the case in CUHK was more or less the same as that of HKU, as Mr CHOW had reported.

26. Dr Peter CHAN advised that City U was conducting a similar review. Given the importance of the two courses, they would be included in the future PCLL programme. He stressed that the curriculum of City U's PCLL programme was indeed very practical, for example, students would be trained on trial advocacy and law drafting. City U would review how its PCLL programme could be further enhanced to make it even more practical.

27. In response to Mr Martin LIAO's enquiry, Mr CHOW Wai-shun advised that the three law schools would coordinate their enhancement measures to respective programmes, in particular on how the two courses in LLB and JD could better interface with the PCLL programmes such that students could learn both legal principles and practice during the vocational stage.

28. The Chairman expressed her views that training in LLB or JD programmes should be theoretically-oriented whereas more training on hands-on skills should be provided in the PCLL programme, and that the overlap between the academic programmes (i.e. LLB and JD) and the PCLL programme should be kept to a minimum. She also hoped that apart from teaching Hong Kong laws, the PCLL programme would widen the horizon of students to facilitate them to grasp the opportunities arising from the latest legal development, such as that in the Greater Bay Area.

Conclusion

29. The Chairman thanked for the participation of deputations. She considered that the discussion on legal education and training could be more diverse in the subjects covered and not just focus on the Law Society's proposals on examinations. For example, more thoughts could be given on the selection of students with aspiration to study the PCLL programme, and how to increase the competitiveness of law graduates, etc.

IV. Implementation of the recommendations made by the Law Reform Commission of Hong Kong

(LC Paper No. CB(4)1007/18-19(05) - Paper on implementation of the recommendations made by the Law Reform Commission of Hong Kong provided by its Secretariat

LC Paper No. CB(4)1007/18-19(06) - Paper on the implementation of the recommendations made by the Law Reform Commission of Hong Kong prepared by the Legislative Council Secretariat (updated background brief))

Briefing by the Law Reform Commission of Hong Kong

30. In her capacity as the ex-officio chairman of the Law Reform Commission of Hong Kong ("LRC"), Secretary for Justice ("SJ") briefed members on the progress of implementation of the recommendations made by LRC by the relevant government bureaux and departments ("B/Ds"), details of which were set out in the LRC Secretariat's paper (LC Paper No. CB(4)1007/18-19(05)).

Functions of the Law Reform Commission of Hong Kong

31. The Deputy Chairman pointed out that LRC was a reputable platform for considering the law in a specified area, including the controversial ones, and presenting well considered law reform proposals to the Administration where appropriate. As such, he criticized the Administration for not invoking the LRC mechanism to study the relevant legal issues in the legislative exercise relating to the Fugitive Offenders Ordinance (Cap. 503) ("the FOO legislative exercise"), but had rushed through the Fugitive Offenders Bill causing public outcry and a divided society. The Deputy Chairman asked whether the Administration had learnt a lesson from the FOO legislative exercise, and would refer controversial subjects to LRC for consideration in future.

32. Mr Alvin YEUNG and Mr CHAN Chi-chuen also questioned why SJ did not refer the subject matters relating to the FOO legislative exercise to LRC, given that the latter was a well-established non-statutory advisory body to consider law reform from the point of view of the community as a whole. They considered that LRC should be able to conduct a thorough study on the impacts that the proposed amendments in the Fugitive Offenders Bill might

bring and listen to the views of the legal professional bodies and other stakeholders.

33. In response, SJ stressed that the Administration had put a stop to the FOO legislative exercise and had no timetable to take forward the Fugitive Offenders Bill and would not reactivate the process. There was no plan to refer the subject relating to the FOO legislative exercise to LRC for study. SJ also said that the Administration had reflected on its experience in the exercise and, learning from this experience, the Administration would adopt a most sincere and humble attitude to accept criticisms and make improvements in serving the public.

34. Mr Alvin YEUNG enquired about the mechanism for referring subjects to LRC for study. SJ explained that generally speaking, she as the ex-officio chairman of LRC would, together with the Chief Justice who was the ex-officio member of LRC, decide which aspects of the law should be referred to LRC for consideration as appropriate in accordance with its terms of reference and the relevant factors. She added that LRC was not the only source of proposals for reforming the law in Hong Kong, and B/Ds might also put forth legislative proposals on subject matters which fell within their respective remits.

35. Mr HUI Chi-fung pointed out that, a sub-committee appointed by LRC often took years to study the subject referred to it by LRC before making its recommendations for public consultation. LRC would then spend year(s) to finalize the report on the relevant law reform proposals having regard to the views collected in the consultation exercise. This lengthy and careful process was in stark contrast to the FOO legislative exercise in which the Administration conducted public consultation on the Fugitive Offenders Bill for just 20 days, and intended to rush through the Legislative Council ("LegCo") in a few months' time.

36. Mr CHAN Chi-chuen also pointed out that, in her response to Mr Alvin YEUNG in paragraph 34 above, SJ failed to elaborate on the principle adopted by the Administration to determine whether a project on law reform would be referred to LRC or would be taken up by B/Ds. In reply, SJ said that there was no hard and fast rule as to whether a project to review the law should be referred to LRC or taken forward by B/Ds. As the circumstances and scope of a comprehensive law reform project conducted by LRC might be much wider than those of a single B/D proposing amendments to a piece of the existing legislation, it was not appropriate to draw a direct comparison between the work of LRC and a legislative amendment exercise conducted by a single B/D.

37. SJ further advised that, as the subject matter of the Fugitive Offenders Bill fell squarely within the Security Bureau ("SB")'s remit, and the Bill was relatively limited in scope, the Administration considered it appropriate for SB to handle the exercise. However, she and the Chief Justice would refer appropriate topics to LRC for a detailed study. SJ also explained that it was not appropriate to compare the time taken in implementing the LRC reports with the time for the FOO legislative exercise, as the former might involve more than one bureau and many stakeholders that needed to be consulted.

Project under study by the Law Reform Commission of Hong Kong

38. Mr CHAN Chi-chuen said that the Review of Sexual Offences Sub-committee ("the Review Sub-committee") was appointed by LRC in 2006 to review the existing sexual offences under the criminal law. However, the Review Sub-committee had only issued three consultation papers but had not yet completed the overall review after more than a decade. Mr CHAN was particularly concerned about the issue on sentencing on the homosexual or homosexual-related offences which was still outstanding, and enquired about the latest development of the work of the Review Sub-committee.

39. In response, SJ advised that the Review Sub-committee had been actively reviewing the existing sexual offences under the criminal law and had published three consultation papers. The first consultation paper on rape and other non-consensual sexual offences was published in September 2012, the second paper on sexual offences involving children and persons with mental impairment was published in November 2016, and the third one on miscellaneous sexual offences was published in May 2018, and the Review Sub-committee was devoting its efforts to compiling the final report in respect of the three consultation papers.

40. SJ further advised that, noting the strong sentiments received in the consultation exercises and the imminent need for the introduction of a new and specific offence of voyeurism to deal with an act of non-consensual observation or visual recording of another person for a sexual purpose and also a new and specific offence in respect of non-consensual upskirt-photography, LRC decided that it would be to the benefit of the community to expeditiously publish the report on "Voyeurism and non-consensual upskirt-photography" ahead of its remaining work.

41. SJ added that besides the three consultation papers mentioned above, the Review Sub-committee had also published a report on sexual offenders register and another report proposing the abolition of the common law presumption that a boy under 14 was incapable of sexual intercourse.

Law reform proposals implemented in part, under consideration or in the process of being implemented

Report on "Voyeurism and non-consensual upskirt-photography"

42. Dr Elizabeth QUAT expressed concern about the impacts brought about by the Court of Final Appeal ("CFA")'s judgment on an appeal case handed down on 4 April 2019 in relation to section 161 of the Crimes Ordinance (Cap. 200) ("the CFA's Judgment"). She considered that the CFA's Judgment would make it difficult for the Police to invoke section 161 of Cap. 200 to institute prosecutions against persons who took photographs clandestinely with their own mobile phones in a private place. With a view to plugging such a loophole, Dr QUAT urged the Administration to commence the relevant legislative process for making of a new offence as early as practicable.

43. SJ responded that in respect of the offence of voyeurism, LRC had released the report on "Voyeurism and non-consensual upskirt-photography" on 30 April 2019 as mentioned in paragraph 40 above. She said that SB welcomed LRC's recommendations and indicated that it would carefully study and follow up on the report. The Administration also planned to discuss the report with the Panel on Security at its meeting in July 2019, to be followed by a consultation, with a view to introducing a bill for LegCo's scrutiny as soon as possible.

(*Post-meeting note:* Given the serious damage caused by the storming of the LegCo Complex by some protesters on 1 July 2019 and due to safety and security reasons, the meeting of the Panel on Security scheduled for 9 July 2019 had been cancelled.)

44. Upon Dr Elizabeth QUAT's request, SJ undertook to provide the total number of cases related to the offence of access to computer with criminal or dishonest intent under section 161 of Cap. 200 which were affected by the CFA's Judgment, and the ways in which DoJ would handle these cases.

(*Post-meeting note:* DoJ's supplementary information paper was issued to members on 7 August 2019 via LC Paper No. CB(4)1161/18-19(01).)

45. The Chairman said that the offences of voyeurism and access to computer with criminal or dishonest intent had been the concerns of the AJLS Panel members for some time. She suggested that, while the Administration tended to discuss such subject matters at the Panel on Security, the Administration might also conduct in-depth discussion on those subjects with the AJLS Panel members in due course. SJ noted the Chairman's suggestion.

Report on "The regulation of debt collection practices"

46. Mr CHEUNG Kwok-kwan noted that the recommendations in the LRC report on "The regulation of debt collection practices" published in July 2002 included creating a criminal offence of harassment of debtors and others, and establishing a statutory licensing system to regulate debt collection agencies. However, SB's response to the report in 2005 was that, upon thorough consideration, there was no need to introduce new criminal offence provisions to regulate the operation of debt collection agencies as the improper debt collection practices could be prosecuted by one or more of the offences in the existing legislation.

47. Mr CHEUNG Kwok-kwan pointed out that debt-collection practices had been ever changing and so were the improper practices, including some cases reported to him in which the referees of borrowers were harassed by the debt collection agencies. He said that debtors could now borrow money from money lenders by simply providing their referees' contact numbers or residential addresses, without the referees being informed and consented. When the debtors could not be located, some money lenders or debt collection agencies would try to recover debts directly or indirectly from the referees who only became aware of the loan by then. Mr CHEUNG said that he had earlier reflected the aforesaid problem to the Financial Services and the Treasury Bureau, which indicated that little could be done to resolve the issues. He enquired what could be done about the LRC report with a view to protecting the innocent referees from being harassed.

48. SJ replied that at the present stage, the Administration was of the view that there was no need to introduce new criminal offence provisions with respect to the operation of debt collection agencies. To her knowledge, SB attached great importance to combating illegal debt collection activities and would keep monitoring the latest trend in debt collection practices and take appropriate actions. SJ undertook to relay Mr CHEUNG Kwok-kwan's views and concerns to SB for follow up as appropriate.

(*Post-meeting note:* According to the LRC Secretariat, it wrote to SB on 25 September 2019 relaying Mr CHEUNG Kwok-kwan's views on the implementation of the LRC report on "The regulation of debt collection practices" for SB's follow up.)

Suggested projects for the Law Reform Commission of Hong Kong

Review of the Public Order Ordinance (Cap. 245) and relevant matters

49. Mr CHAN Chi-chuen noted that, after the report on "Arrest" was published by LRC in 1992, the Administration had formed an Interdepartmental Working Group to study the report. One of the Working Group's proposals was that the power to stop and search should be exercised under a test of reasonable suspicion where there was a current statutory requirement for it, when the subject was in a public place, and when the subject was suspected of having committed or being about to commit any imprisonable offence. Nonetheless, the proposals recommended in the report on "Arrest" were implemented only in part after so many years, and the measures adopted could not safeguard against possible abuse of power.

50. Mr CHAN Chi-chuen pointed out that the Police had arbitrarily carried out identity checks in Admiralty on 11 June 2019 and used excessive forces to suppress the peaceful demonstrations against the Fugitive Offenders Bill staged in Admiralty on 12 June 2019 ("the incident on 12 June 2019"). Mr CHAN urged that LRC should comprehensively review the Public Order Ordinance (Cap. 245), in particular whether the offences of riot and unlawful assemblies therein were still appropriate for the present day's circumstances and whether the threshold for instituting prosecutions against such offences was too low.

51. Mr CHU Hoi-dick said that the public was infuriated by the Chief Executive's description of the incident on 12 June 2019 as "riot" under Cap. 245. Mr CHU considered that the definitions of "riot" and "unlawful assemblies" in Cap. 245 had been very outdated, and enquired whether the Administration would stop prosecuting the protesters for taking part in a riot under Cap. 245. He also enquired whether a comprehensive review of the definitions of "riot" and "unlawful assemblies" in Cap. 245 would be conducted by LRC.

52. Dr Fernando CHEUNG considered it wrong to describe the incident on 12 June 2019 as riot and pointed out that, if a person was found guilty of the offence of riot under Cap. 245, he or she should be liable on conviction on indictment, to imprisonment for 10 years; and on summary conviction, to a fine at level 2 and to imprisonment for five years. He considered the penalties disproportionately harsh relative to the vague definition of "riot" and urged LRC to consider whether Cap. 245 should be reformed and improved accordingly.

53. In response to members' views, SJ stressed that in making each prosecutorial decision, DoJ would base on evidence, the applicable laws and the Prosecution Code. Irrespective of whether the incident on 12 June 2019 was described as a riot or not, and who described it, it would not affect DoJ's impartiality in discharging its prosecutorial duties. SJ further stressed that, unless there was sufficient admissible evidence to support a reasonable prospect of conviction, no prosecution should be commenced.

54. As regards the definition of "riot" and "unlawful assemblies", SJ said that CFA had provided guidance on the scope of such offences in some of its recent judgments. In this connection, so long as the relevant laws remained unchanged, the Administration and the public should act pursuant to the relevant legislation and the CFA's judgments. Nevertheless, the Administration would listen to the views of the public and review the relevant legislation, including Cap. 245, if and when necessary.

55. Mr Alvin YEUNG indicated that he had recently received complaints against certain police officers that, when discharging duties at public assemblies and demonstrations, they did not show their warrant cards or display their unique identification ("UI") numbers upon requests. There were also complaints lodged against the Special Tactical Contingent of the Police for not displaying their UI numbers on uniforms. Mr YEUNG asked whether LRC would consider reforming the law to prohibit police officers from concealing their UI numbers when taking actions so that members of the public engaged in such actions might follow up with the relevant officers if necessary.

56. SJ replied that the showing of warrant cards and displaying of UI numbers by police officers were part of the day-to-day operational arrangements of the Police rather than any legal requirements. As such, that matter was more appropriate to be considered by SB and the Police rather than LRC.

57. The Chairman considered that frontline police officers sometimes found it difficult to discharge their duties owing to ambiguities of certain legislation relating to large-scale public meetings, processions and gatherings, resulting in growing conflicts between police officers and members of the public. Therefore, she suggested LRC conduct a review of relevant legislation to improve the situation. SJ noted the Chairman's suggestion.

Anti-mask law

58. The Chairman referred to the Occupy Central Movement in 2014 and the FOO legislative exercise which had led to large-scale confrontations between police officers and protesters. She expressed the concern that, as many protesters wore masks during public assemblies and demonstrations and police

officers might not be able to arrest those engaged in unlawful acts on the spot, the Police would encounter difficulties in gathering evidence afterwards. As many overseas jurisdictions had already banned participants in public assemblies and demonstrations from wearing masks through legislation, the Chairman suggested that LRC should also consider introducing similar law in Hong Kong.

59. Dr Elizabeth QUAT indicated support for the Chairman's view. She said that according to some studies, persons wearing masks during public assemblies and demonstrations tended to believe that, as they were anonymous, they could evade liability for the unlawful acts committed during the demonstration and hence were more likely to engage in violent acts and damaging others' properties. Dr QUAT further said that she had already suggested introducing anti-mask law since the Occupy Central Movement took place in 2014, but no action had been taken by the Administration. She urged that LRC should study the possibility of introducing anti-mask law in Hong Kong as soon as practicable.

Proposed new offence of insulting police officers on duty

60. The Chairman pointed out that incident of protesters insulting and provoking police officers with abusive language or obscene gestures occurred from time to time, while there was no specific provision under the existing legislation criminalizing the act of insulting police officers on duty. Dr Elizabeth QUAT agreed with the Chairman and said that the frequent occurrences of public officers on duty being arbitrarily insulted or provoked by members of the public had greatly increased their work stress and difficulties in performing their duties, and dampened their morale and passion for serving the public.

61. The Chairman and Dr Elizabeth QUAT urged LRC to make reference to jurisdictions where there were legislation against the offence of insulting public officers, such as the Macau Special Administrative Region, to study the legislation and enforcement method with a view to studying the possibility of introducing similar legislation in Hong Kong.

62. SJ said she noted the members' views regarding the legislation on anti-mask and offences on insulting police officers, and that LRC or the relevant B/Ds might follow up on the suggestions as and when necessary.

Protection of privacy

63. Dr Elizabeth QUAT noted that LRC had released its report on "Privacy — Part 5: Civil liability for invasion of privacy" in December 2004.

She pointed out that, with the rise of social discontent in recent months, there had been an increasing number of cyber-bullying cases in which the personal data and private information of Members as well as public officers, in particular police officers, were exposed on the Internet and, in some cases, their family members were also threatened or harassed. Dr QUAT enquired whether LRC would consider enhancing the role of the Privacy Commissioner for Personal Data so as to curb the growing problem of privacy invasion and cyber-bullying.

64. The Chairman also expressed concern about the recent serious incidents relating to large-scale leakage of personal privacy and data, such as the Registration and Electoral Office's loss of a notebook computer containing the personal data of 3.78 million Geographical Constituencies electors across the territory in 2017, and the leakage of the personal data of 9.4 million passengers by the Cathay Pacific Airways in 2018. She considered that the current provisions in the Personal Data (Privacy) Ordinance (Cap. 486) were inadequate to deal with the risks of leaking personal data, and far lagged behind the rapid advance in technology, including the use of artificial intelligence, which might create new privacy risks. In this connection, the Chairman requested that LRC should review Cap. 486 expeditiously and comprehensively, including the adequacy of penalty to enhance the deterrent effect.

65. SJ explained that the Office of the Privacy Commissioner for Personal Data would spare no effort to continue enforcing the law to protect personal data privacy. It was also very much concerned about the recent large-scale leakage of personal privacy and data. As regards cybercrimes including those of concern to Dr Elizabeth QUAT, SJ said that a sub-committee was established by LRC in December 2018 to study the topic of cybercrime. Among other things, this sub-committee would identify the challenges arising from the rapid developments associated with information technology, the computer and the Internet, review existing legislation and other relevant measures, examine relevant developments in other jurisdictions and recommend possible law reforms, if any. It might also study the possible criminal activities arising from the rapid development of artificial intelligence in the context of cybercrime.

66. SJ added that the Administration would also keep abreast of the latest technological development so that the law would be kept in pace with such development.

The Secretary for Justice as chairman of the Law Reform Commission of Hong Kong

67. Mr HUI Chi-fung said that as the ex-officio chairman of LRC, SJ had failed to discern the seriousness and controversies surrounding the FOO legislative exercise and did not refer the subject to LRC for a detailed study.

On the contrary, SJ had abided by the Administration's decision of conducting a mere 20 days' public consultation on the Fugitive Offenders Bill and rushed it through LegCo, generating unprecedented controversies, disputes and anxieties in the society. In view of the above, Mr HUI said that SJ should be ashamed for what she had done, held accountable and should step down from her post.

68. Mr CHAN Chi-chuen also expressed his disappointment that SJ had only attended one meeting of the Panel on Security to brief members on the Fugitive Offenders Bill, which was so controversial and had aroused grave public concerns. He further pointed out that, according to the survey findings released in June 2019 by the Hong Kong Institute of Asia-Pacific Studies of The Chinese University of Hong Kong, the popularity rating of SJ was 26.8, which was an all-time low in her term of office. Dr Fernando CHEUNG and Mr CHU Hoi-dick echoed the views of Mr HUI Chi-fung and Mr CHAN and agreed that SJ was not fit for the post. They questioned whether SJ would resign from her post.

69. In reply, SJ said that she and her colleagues in the Government had been working as a team and making their best efforts to take forward the FOO legislative exercise. When the Fugitive Offenders Bill was introduced, the Administration had set out to explain the proposals to various sectors of the community and listen to their views through different means. Notwithstanding that, SJ said that the Administration accepted that the explanation and communication were inadequate and ineffective. The Administration pledged to adopt a most sincere and humble attitude to accept criticisms and make improvements in serving the public, as well as continued to do its utmost in upholding Hong Kong's rule of law.

Motion

70. The Chairman said that she had received a motion proposed by the Deputy Chairman and seconded by Mr Alvin YEUNG, and considered the proposed motion directly related to the agenda item under discussion. The Chairman then ordered that the voting bell be rung for five minutes to notify the AJLS Panel members of the voting.

71. The Chairman put the following motion to vote:

> 本會促請法律改革委員會全面檢視《公安條例》，並作出適當的修訂以確保所訂罪行必須符合人權保障。

(Translation)

This Panel urges the Law Reform Commission to conduct a comprehensive review on the Public Order Ordinance and make appropriate amendments to ensure that the offences provided for must be compatible with human rights safeguards.

72. The Chairman announced that six members voted for the motion, none voted against it and none abstained from voting. The Chairman declared that the motion was carried.

V. Proposed amendments to the High Court Ordinance (Cap. 4) to facilitate the more efficient handling of cases, including those relating to non-refoulement claims

(LC Paper No. CB(4)1007/18-19(07)	- Judiciary Administration's paper on proposed amendments to the High Court Ordinance (Cap. 4) to facilitate the more efficient handling of cases, including those relating to non-refoulement claims
LC Paper No. CB(4)451/18-19(01)	- Joint letter from Hon CHEUNG Kwok-kwan, Dr Hon Elizabeth QUAT and Dr Hon CHIANG Lai-wan on the problem of the Judiciary's pressure arising from non-refoulement claim cases)

73. Deputy Judiciary Administrator (Development) ("DJA(D)") briefed members on the proposed amendments to the High Court Ordinance (Cap. 4) to facilitate the more efficient handling of cases, including those relating to non-refoulement claims ("proposed legislative amendments"). In gist, the proposed legislative amendments sought to:

(a) extend the use of a 2-Judge bench of the Court of Appeal ("CA") to determine appeals from the Court of First Instance ("CFI") in relation to the refusal of leave to judicial review ("JR") or the grant of leave to JR on terms;

(b) allow parties to different types of proceedings before a 2-Judge bench of CA to apply to re-argue the case before a 3-Judge bench of CA when the 2-Judge CA could not reach a unanimous decision;

(c) streamline the procedure for application for leave to appeal to CFA generally; and

(d) introduce other technical amendments regarding a judge's power to dispose of cases on paper.

74. DJA(D) said that from time to time, DoJ introduced a Statute Law (Miscellaneous Provisions) Bill into LegCo proposing amendments to various enactments for the purpose of updating or improving the existing legislation. Given that the nature of the proposed legislative amendments was relatively straight forward, she said that subject to the feedback of the AJLS Panel members, legal professional bodies and other relevant stakeholders on the proposed amendments, the Judiciary suggested to include the proposed amendments to Cap. 4 in the next Statute Law (Miscellaneous Provisions) Bill to be taken forward by DoJ, so that the amendments might be introduced as soon as possible.

Views of the Hong Kong Bar Association

75. Ms Kirsteen LAU of the Bar Association said that since the consultation being conducted by the Judiciary had started quite recently which would last until 6 September 2019, the Bar Association had not yet gone into great details about the proposed legislative amendments. In this connection, she would only mention some of the Bar Association's initial comments which were given in its submission tabled at the meeting:

(a) the proposed legislative amendments would apply to all JRs and not just those concerning non-refoulement claim cases. Careful considerations should be given to ensuring a balance expedience and upholding the high standards of fairness in these cases before the amendments were introduced;

(b) the Bar Association was not clear whether the sharp increase in JRs arising from non-refoulement claim cases was a short-term problem owing to the United Screening Mechanism introduced in 2014 when a large volume of Torture Claims which had been determined under the Immigration Ordinance (Cap. 115) had to be re-screened under all applicable grounds other than torture so that a significant bottleneck was caused, or a trend which was set to continue

necessitating the proposed legislative amendments in the long term; and

(c) measures other than the proposed legislative amendments to relieve the pressure on the courts due to the sudden increase in JRs in 2017 and 2018 should be explored, such as increasing judicial manpower and improving the quality of the decisions made by Immigration Department ("ImmD") and the Torture Claims Appeal Board ("TCAB")/Non-refoulement Claims Petitions Office.

76. Ms Kirsteen LAU said that the Bar Association was not opposing the proposed legislative amendments but urged the Judiciary to consider whether the legislative proposal would be the only effective measure to relieve the pressure on the courts.

(*Post-meeting note:* The submission of the Bar Association was circulated to members on 25 June 2019 via LC Paper No. CB(4)1058/18-19(02).)

(At 6:25 pm, the Chairman extended the meeting for 15 minutes to 6:45 pm.)

Discussion

Impacts of the sharp increase in the number of court cases in relation to non-refoulement claim cases

77. The Chairman expressed grave concerns about the sharp increase in the number of applications for leave to apply for JR made to CFI from 2016 to 2018, as well as that in the number of civil appeal cases and leave applications (civil) in relation to non-refoulement claim cases filed to CA and CFA respectively during the same period. Dr Elizabeth QUAT also asked whether and how the court would prioritize the applications for leave to apply for JRs in relation to cases concerning non-refoulement claims and cases other than those, and whether the progress of handling the latter type would be affected by the former.

78. In response, Assistant Judiciary Administrator (Development)2 ("AJA(D)2") explained that there was no separate listing arrangement to cater for application for leave to apply for JR cases arising from different causes. DJA(D) said it was inevitable that the sharp increase in the number of JRs arising from the surge in non-refoulement claim cases would affect the progress in handling JR cases arising from other causes. Nevertheless, the Judiciary would try its best to ensure that all cases were handled as expeditiously as was

reasonably practicable, and the proposed legislative amendments were among the measures to address the increasing caseload.

79. The Chairman asked about the longest time taken for the court to handle a non-refoulement claim case. AJA(D)2 said that he did not have such information in hand and remarked that each case had its individual circumstances which could affect the processing time. The Chairman requested the Judiciary to provide such information after the meeting as appropriate.

(*Post-meeting note:* The Judiciary Administration's supplementary information paper was issued to members on 3 September 2019 via LC Paper No. CB(4)1201/18-19(01).)

Special considerations for non-refoulement claim cases

80. Dr Fernando CHEUNG agreed with the Bar Association that any legislative amendments which had the potential to lower the standard of fairness had to be closely scrutinized. He pointed out there should be well-founded reason behind section 34B(2) of Cap. 4 which provided that CA was duly constituted if it consisted of an uneven number of Justices of Appeal not less than three (i.e. 3-Judge CA) in the exercise of its civil jurisdiction. Therefore, whether the proposed legislative amendments would have a negative impact on the standard of fairness to the appeals in JR cases arising from the non-refoulement claim cases should be carefully considered. The Deputy Chairman shared a similar view and considered that upholding the standard of fairness was highly important to the rule of law.

81. In reply, DJA(D) explained that the Judiciary had always been very careful to ensure a high standard of fairness in a judicial proceeding. She pointed out that currently a number of matters under the civil jurisdiction of CA were already determined by two Justices of Appeal, including appeal of which all parties had filed a consent to the appeal being heard and determined by a 2-Judge CA, etc. In the event of a 2-Judge CA not being able to reach a unanimous decision, the party lodging appeal could apply to have the case re-argued before a 3-Judge CA under the current mechanism. Therefore, the high standard of fairness of a judicial proceeding should not be affected by the proposed legislative amendments. However, Dr Fernando CHEUNG considered that notwithstanding such an arrangement, the procedure would be complicated for the appellants and the high standard of fairness might be adversely affected.

Effectiveness of the proposed legislative amendments

82. Dr Elizabeth QUAT asked to what extent the time for dealing with JRs in relation to non-refoulement claim cases would be shortened after the proposed legislative amendments were in force, and when would all the backlog cases be cleared by the court. In reply, DJA(D) said that it was difficult to estimate how the proposed amendments would impact on the time taken to process a case, given that the court was essentially in a passive position in receiving applications for leave to apply for JRs, and each case might have unique circumstances that could affect the time for its processing and eventual disposal. The number of cases to be handled and the time required to process them was beyond the control of the Judiciary and difficult to predict. However, the amendments should have positive impact to alleviate the workload of the court.

83. Dr Elizabeth QUAT said that, according to the Judiciary Administration ("Jud Adm"), claimants of about half of the rejected non-refoulement claim applications would apply for leave to apply for JR. Therefore, Jud Adm should be able to estimate the number of JRs in relation to non-refoulement claims to be handled by the court.

84. Dr Elizabeth QUAT also pointed out that when the Administration was pressed by LegCo Members to deal with the sudden increase in non-refoulement claims, SB responded by amending the legislation and increasing the manpower in ImmD to expedite the immigration screening. However, with the surge in the number of applications for leave to apply for JRs by the non-refoulement claimants whose appeals were unsuccessful, and the fact that these JRs were subject to appeals at a higher level of court, the accumulated number of cases to be handled by the Judiciary was expected to increase so that the backlog problem would deteriorate. Dr Elizabeth QUAT was concerned whether the Judiciary was well-prepared to meet such a big challenge, including whether and how the judicial manpower required would be deployed.

Other measures to facilitate the more efficient handling of cases by the court

85. The Deputy Chairman indicated that he supported the proposed legislative amendments in principle as an expedience for handling of civil cases, including cases in relation to non-refoulement claim cases. However, he pointed out that as members of AJLS Panel had raised time and again, the shortage of judicial manpower was a long-standing problem causing the slow progress of processing cases and delivering judgments by the court. Therefore, Jud Adm should not put the blame solely on the sharp increase in the non-refoulement claim cases, and should make effort to solve the fundamental problem.

86. AJA(D)2 advised that the proposed legislative amendments were among the measures to alleviate the heavy workload of the Judiciary, particularly that arising from the sharp rise in JR cases from non-refoulement claims in recent years. The Judiciary would put forward bids for additional judicial and other staffing resources to the Government according to the established mechanism of the budgetary arrangement between the Judiciary and the Government if required. He added that in view of the sharp rise in caseloads, the Judiciary had engaged more deputy judges, including retired judges, to handle the relevant judicial work. The Chairman said that, if the Judiciary needed additional manpower to handle the workload arising from the increase in JRs, she believed that AJLS Panel would support the relevant staffing proposals.

87. Dr Fernando CHEUNG said that as the Bar Association had pointed out in its submission, the quality of decisions made by the Immigration Department and TCAB/Non-refoulement Claims Petition Office, as well as the inadequate legal aid/duty lawyer funding provided to non-refoulement claimant for their appeal to TCAB, might have added to the court's caseload. He pointed out that with legal representation and cases properly presented and heard at the appeal level, there might be fewer applications for JR of TCAB decisions. Similarly, the difficulty in getting legal aid for application for leave for JR meant that nearly all non-refoulement claim applicants for leave for JR were unrepresented and such inadequately prepared cases would creat a great deal more work for judges.

88. As invited by the Chairman, Ms Kirsteen LAU supplemented her view that if the quality of TCAB decision was much improved, there would be less JR in relation to elementary errors in the decision-making process in the Unified Screening Mechanism, such as being unable to use the definition of "persecution" properly, etc. by TCAB.

(At 6:44 pm, the Chairman suggested and members raised no objection to further extending the meeting for 15 minutes to finish the discussion.)

89. Dr Fernando CHEUNG asked whether the Judiciary would consider the suggestions made by the Bar Association on increasing the number of TCAB members, increasing the transparency of making decision by TCAB and increasing legal aid funding apart from the proposed legislative amendments. In reply, AJA(D)2 said that the Judiciary would not be in a position to respond to those suggestions as they fell outside the remit of the Judiciary.

90. The Chairman shared members' views raised above that the Administration should strengthen its manpower to minimize JRs and on other measures to relieve the pressure on the courts due to the sudden increase in JRs

in 2017 and 2018. She also said that, if necessary, AJLS Panel could transmit the relevant views to the relevant B/Ds as appropriate.

91. At the request of the Chairman and Dr Fernando CHEUNG, DJA(D) agreed to give a written response to the Bar Association's submission. She added that the Judiciary would continue to listen to the views from other stakeholders as well.

(*Post-meeting note:* The Judiciary Administration's supplementary information paper was issued to members on 3 September 2019 via LC Paper No. CB(4)1201/18-19(02).)

VI. Any other business

92. There being no other business, the meeting ended at 6:47 pm.

Council Business Division 4
Legislative Council Secretariat
25 October 2019

Appendix

Panel on Administration of Justice and Legal Services

Meeting on Monday, 24 June 2019, at 4:00 pm
Receiving public views on "Legal education and training in Hong Kong"

Summary of views and concerns expressed by deputations/individuals

No.	Name of deputation/individual	Submission/Major views and concerns
1.	Hong Kong Bar Association	● Introducing the Law Society Examination ("LSE") proposed by The Law Society of Hong Kong ("the Law Society") might entail legislative amendments and require the consent from the Chief Justice of the Court of Final Appeal. The Bar Association would comment on the above examination when details were available from the Law Society. ● If one of the reasons for introducing LSE was the lack of the Postgraduate Certificate in Laws ("PCLL") programme places, such reason might no longer be valid as the PCLL programme places had been increased in recent years.
2.	Department of Professional Legal Education, Faculty of Law, The University of Hong Kong ("HKU")	● In the light of the recommendations made by the Standing Committee on Legal Education and Training ("SCLET")'s appointed consultants ("Consultants") in the final report on the comprehensive review on legal education and training in Hong Kong ("Final Report"), HKU would discuss with SCLET and relevant stakeholders and implement the relevant recommendations as appropriate. ● HKU hoped that any measures to improve and enhance the legal education and training system in Hong Kong would serve the public interest and avoid any double (or even multiple) jeopardy to students.

No.	Name of deputation/individual	Submission/Major views and concerns
		● Legal education and training was not solely the responsibility of the universities, legal professional bodies also had a role in providing on-the-job training and should liaise with the universities in the process such that the two phases of training could interface smoothly with each other. ● HKU was exploring how the curriculum of law programmes could be enhanced to keep pace with the development of the legal sector, including the development of the Guangdong-Hong Kong-Macao Greater Bay Area ("Greater Bay Area").
3.	The Undergraduate Law Society of the Student Union of The Chinese University of Hong Kong ("SU, CUHK")	● Presentation of views as set out in submission (LC Paper No. CB(4) CB(4)1008/18-19(01) (English version only)
4.	Faculty of Law, CUHK	● CUHK shared the views of HKU and SU, CUHK. ● The academic stage and vocational stage in legal education and training had been operating smoothly and the legal sector was in general satisfied with the performance of graduates of the PCLL programmes. No concrete complaints had been received from solicitor firms or the Law Society on substandard performance of graduates of the PCLL programmes. ● In the light of the recommendations made by SCLET's Consultants in the Final Report, CUHK would discuss with SCLET and relevant stakeholders and implement the relevant recommendations as appropriate. ● The new Dean of the Faulty of Law of CUHK, after resuming office in September 2019, would propose improvements to the curriculum of law

No.	Name of deputation/individual	Submission/Major views and concerns
		programmes, having regard to the changing legal landscape, including the trend of globalization, development of the Greater Bay Area and the Belt and Road Initiative.

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