

立法會
Legislative Council

LC Paper No. CB(4)884/19-20
(These minutes have been seen
by the Administration)

Ref : CB4/PL/AJLS

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 22 June 2020, 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)
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon CHAN Kin-por, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Steven HO Chun-yin, BBS
Hon WU Chi-wai, MH
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Hon IP Kin-yuen
Hon Elizabeth QUAT, BBS, JP
Hon Martin LIAO Cheung-kong, GBS, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, SBS, JP
Hon Alvin YEUNG
Hon Jimmy NG Wing-ka, BBS, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon YUNG Hoi-yan, JP
Hon Tanya CHAN
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Hon LAU Kwok-fan, MH
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho

Members absent : Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, GBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Hon KWOK Wai-keung, JP
Hon CHUNG Kwok-pan
Hon CHU Hoi-dick
Hon Holden CHOW Ho-ding

Public officers attending : **Agenda item II**

Department of Justice

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

Mr Terence LEE
Government Counsel
The Law Reform Commission of Hong Kong

Agenda item III

The Law Reform Commission of Hong Kong

Ms Adeline WAN
Acting Secretary

Review of Sexual Offences Sub-committee

Mr Peter DUNCAN, SC
Chairman

Mr Eric CHEUNG T M
Member

Mr Andrew POWNER
Member

Miss Sally NG
Secretary

Agenda item IV

Department of Justice

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

Ms Peggy AU YEUNG
Senior Assistant Solicitor General (Policy Affairs)
(Acting)

Mr Edmund MA
Senior Government Counsel (Acting)

Attendance by invitation : **Agenda item III**

Hong Kong Bar Association

Mr Randy SHEK

Agenda item IV

Hong Kong Bar Association

Mr Jeremy BARTLETT, SC

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

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

Mr Ambrose LEUNG
Senior Council Secretary (4)6

Ms Emily LIU
Legislative Assistant (4)6

Action

- I. Information paper(s) issued since the last meeting**
(LC Paper No. CB(4)647/19-20(01) - Letter dated 27 May 2020 from Hon Elizabeth QUAT requesting the Panel to discuss matters relating to the handling of complaints against judicial conduct)

The draft law on safeguarding national security in the Hong Kong Special Administrative Region of the People's Republic of China

The Deputy Chairman referred to the joint letter dated 22 May 2020 from five members belonging to the Civic Party, including himself, regarding the deliberation of the National People's Congress in relation to the draft Decision on establishing and improving legal system and enforcement mechanisms for the Hong Kong Special Administrative Region ("HKSAR") to safeguard national security (LC Paper No. CB(4)634/19-20(01) tabled at the meeting on 25 May 2020), and another letter dated 22 June 2020 to the Chairman on the same topic. He requested the Panel on Administration of Justice and Legal Services ("the AJLS Panel") to discuss matters relating to the draft law on safeguarding national security in HKSAR of the People's Republic of China ("the draft National Security Law"), in particular its impacts to the rule of law and human rights in Hong Kong.

2. The Chairman said that she had raised the matter with the Department of Justice ("DoJ"). DoJ had verbally advised that since the draft National Security Law involved the national, not local legislative process, the AJLS Panel was not an appropriate venue for discussion of the topic.

3. Mr Alvin YEUNG, Mr WU Chi-wai, Mr Charles MOK, Mr CHAN Chi-chuen, Dr Fernando CHEUNG, Mr IP Kin-yuen and Ms Tanya CHAN expressed that given the serious concerns expressed by various sectors over the draft National Security Law, the Administration had a duty to explain the relevant details to the legislature and answer Members' queries. Mr YEUNG,

Action

Dr KWOK Ka-ki, Ms Claudia MO and Mr KWONG Chun-yu suggested the Chairman making a formal request on behalf of the AJLS Panel to invite the Secretary for Justice ("SJ") to attend the AJLS Panel meeting to discuss this topic.

4. Mr Steven HO said that it would not be meaningful for the AJLS Panel to hold a meeting to discuss the draft National Security Law as it was a national law, the legislation of which fell within the prerogative of the National People's Congress. Mr HO suggested that the Administration should conduct more public education on the draft National Security Law after it had come into effect.

5. Dr Fernando CHEUNG expressed his wish to move a motion for the AJLS Panel to hold a meeting to discuss matters relating to the draft National Security Law with the Administration. The Chairman ruled in accordance with Rule 22(p) of the House Rules that the motion could not be proposed since it was not directly related to the agenda item under deliberation.

6. Ms Elizabeth QUAT requested that the AJLS Panel should discuss the issues in her letter dated 27 May 2020 regarding the handling of complaints against judicial conduct (LC Paper No. CB(4)647/19-20(01)). Dr CHIANG Lai-wan referred to her letter dated 27 April 2020 (LC Paper No. CB(4)522/19-20(01)) in which she had suggested that there was a need for DoJ to explain the starting points of sentencing for different offences. Dr CHIANG requested that if there was insufficient time for the AJLS Panel to discuss her letter before the end of the legislative term, the item should be followed up in the future.

7. The Chairman said that as Ms Tanya CHAN had proposed, she would request the Administration to provide written response to the various subjects covered in the above letters from members. Members agreed.

(Post-meeting note: The Administration's response to the joint letter of the five members belonging to the Civic Party had been issued to members on 26 June 2020 vide LC Paper No. CB(4)769/19-20(01). The Judiciary Administration's response to Ms Elizabeth QUAT's letter had been issued to members on 7 July 2020 vide LC Paper No. CB(4)795/19-20(01).)

Action

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

(LC Paper No. CB(4)715/19-20(01) - Administration's paper on implementation of the recommendations made by the Law Reform Commission of Hong Kong

LC Paper No. CB(4)715/19-20(02) - Paper on 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

8. In her capacity as the ex-officio chairman of the Law Reform Commission of Hong Kong ("LRC"), 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)715/19-20(01)).

Implementation progress of the recommendations made by the Law Reform Commission of Hong Kong

9. Members were generally concerned about the long time taken for LRC to consider for reform of those aspects of the laws of Hong Kong referred to it by SJ or the Chief Justice. It took years for a sub-committee appointed by LRC to study the subject referred to it before making recommendations for public consultation. LRC then took year(s) to finalize the report on the relevant law reform proposals having regard to the views collected in the consultation exercise(s).

10. Dr Fernando CHEUNG and Mr KWONG Chun-yu noted with concern that, of the 66 reports which had been published by LRC since 1982 with recommended changes to the law, 17 reports (around 25% of the 66 reports) were still under consideration or in the process of being implemented. Dr CHEUNG expressed particular concerns about the long time taken by the Administration in considering the recommendations in LRC's reports on "Guardianship and custody — Part 4: Child custody and access" published in March 2005, "Substitute decision-making and advance directives in relation to medical treatment" published in August 2006 and "Class actions" published in May 2012.

Action

11. Mr KWONG Chun-yu pointed out that the report on "Hearsay in criminal proceedings" published in 2009 had not yet been implemented for more than a decade. In order to enhance the protection for the underprivileged groups such as the mentally incapacitated persons, Mr KWONG urged that the relevant recommendations in those reports should be implemented as soon as practicable.

12. Mr CHAN Chi-chuen also pointed out that the Review of Sexual Offences Sub-committee ("the Sub-committee") was formed under LRC in 2006 to review the sexual offences under the criminal law but LRC's report on "Review of substantive sexual offences" ("the Report on Sexual Offences") was only issued in December 2019.

13. In response, SJ advised that LRC attached great importance to monitoring the progress on implementation of its recommendations. However, the progress was affected by a number of factors including government policies and practical implications of the issues involved, and the acceptance of such recommendations by the relevant stakeholders and the public. SJ also said that LRC would adopt a pragmatic and progressive manner in making its recommendations. Taking the review of sexual offences as example, she pointed out that having regard to the complexity of the subject, the Sub-committee had issued three consultation papers in 2012, 2016 and 2018 respectively before LRC made its final recommendations in the Report on Sexual Offences.

14. Mr CHAN Chi-chuen also expressed concerns that, while the Security Bureau ("SB") was studying the large number of recommendations made in the Report on Sexual Offences, it would take a long time for SB to complete its consideration. Therefore, he urged that the Administration should expeditiously implement LRC's recommendations.

15. SJ advised that in order to address public concerns about the delays in implementing LRC's recommendations, B/Ds having policy responsibility over a LRC's report were required to provide at least an interim response within six months of publication of the report, and a detailed public response within 12 months of its publication. The LRC Secretariat would communicate closely and regularly with relevant B/Ds regarding their responses to LRC's recommendations. In addition, an annual report flagging up the progress in respect of LRC's reports which had not yet been implemented would be submitted by SJ to the AJLS Panel for discussion and to facilitate the relevant Panels of the Legislative Council to follow up with the responsible B/Ds. The implementation progress of the recommendations made by LRC and relevant information were also uploaded to LRC's official webpage for public inspection.

Action

16. The Chairman and Dr Fernando CHEUNG were of the view that as the LRC members were working on a voluntary basis, the inadequacy in manpower resources in LRC might have prolonged the consultation process and the study of its reports. The Chairman also asked whether the Administration would formulate any plan to enhance LRC's manpower resources or not.

17. In reply, SJ said that the Administration had kept on reviewing the manpower resources of LRC from time to time, and would submit staffing proposals to the Finance Committee for approval if necessary. For example, in 2019, the Establishment Subcommittee's endorsement had been sought for the creation of one permanent post of Deputy Principal Government Counsel (DL2) in the LRC Secretariat to strengthen the legal support provided to LRC to expedite its work in making and implementing recommendations on reform of the law, which was pending the approval of the Finance Committee.

Recommendations under consideration or in the process of being implemented

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

18. In view of the recent increase in the number of clandestine photo-taking cases, Ms Elizabeth QUAT expressed grave concern about the latest progress and timetable of the introduction of a new and specific offence of voyeurism to deal with acts of non-consensual observation or visual recording of another person for a sexual purpose, and a new and specific offence in respect of non-consensual upskirt-photography, as recommended in LRC's report on "Voyeurism and non-consensual upskirt-photography" ("the Report on Voyeurism") issued in April 2019.

19. In response, SJ advised that SB had been considering LRC's recommendations in the Report on Voyeurism and planned to discuss them at the Panel on Security within the 2019-2020 legislative session, to be followed by a public consultation with a view to introducing a bill for the Legislative Council's scrutiny. However, as the Chairman and Deputy Chairman of the Panel on Security for the 2019-2020 session were not elected until December 2019 and the meetings of the Panel between February and April 2020 were rescheduled due to the outbreak of the coronavirus disease-2019, the item had not yet been discussed.

(Post-meeting note: The Panel on Security discussed the item on "Proposed introduction of offences on voyeurism and non-consensual photography of intimate parts, and related offences" at its meeting on 7 July 2020.)

Action

20. SJ supplemented that pending the introduction of the new offence of voyeurism, DoJ would continue to ensure that charges taken against the acts of clandestine photo-taking under the offence of "access to computer with criminal or dishonest intent" under section 161 of the Crimes Ordinance (Cap. 200) would be handled appropriately, such as considering the feasibility of laying alternative charge(s). SJ also said that she would draw SB's attention to Ms Elizabeth QUAT's concerns.

DoJ 21. Upon Ms Elizabeth QUAT's further request, SJ undertook to provide the number of cases which could not be proceeded with the prosecution with the charge of "access to computer with criminal or dishonest intent" against those persons who took photographs clandestinely with their own mobile phones in a private place, since the Court of Final Appeal's judgment in respect of section 161 of Cap. 200 was handed down on 4 April 2019.

Reports on "Privacy — Part 4: Privacy and media intrusion" and "Privacy — Part 5: Civil liability for invasion of privacy"

22. The Chairman pointed out that amidst the recent social events, there had been an increasing number of cyber-bullying cases in which the personal data and private information of Members, public officers (in particular police officers) were exposed on the Internet and, in some cases, even their family members were threatened or harassed. In relation to LRC's reports on "Privacy — Part 4: Privacy and media intrusion" and "Privacy — Part 5: Civil liability for invasion of privacy" issued in December 2004, the Chairman asked whether LRC would consider reviewing the Personal Data (Privacy) Ordinance (Cap. 486) expeditiously and comprehensively to enhance the role of the Privacy Commissioner for Personal Data with a view to curbing the growing problem of privacy invasion and cyber-bullying.

23. In response, SJ said that a sub-committee had been established by LRC in December 2018 to study the topic of cybercrime having regard to the rapid developments associated with information technology, the computer and the Internet, as well as the potential for them to be exploited for carrying out criminal activities. In the course of its study, this sub-committee would identify the challenges arising from such rapid developments, review existing legislation and other relevant measures, examine relevant developments in other jurisdictions and recommend possible law reforms (if any).

Report on "Enduring powers of attorney: personal care"

24. In response to Dr Fernando CHEUNG's concern about the implementation progress of the report on "Enduring powers of attorney: personal care" published in July 2011, SJ advised that DoJ had convened

Action

meetings of an inter-departmental working group to examine the recommendations in the report. DoJ had also launched a public consultation on a draft Bill on 28 December 2017 and briefed the AJLS Panel on the consultation on 22 January 2018. DoJ would brief the AJLS Panel on the result of the consultation as well as the proposed way forward on a date to be confirmed.

Report on "Criteria for service as jurors"

25. Dr Junius HO said that it was alleged that some people were mobilized to serve as jurors for trials relating to the recent social events, in order to help those defendants belonging to the same political camp as theirs through affecting the judgments. Noting that LRC's report on "Criteria for service as jurors" ("the Report on Jurors") had been published in June 2010, Dr HO considered that criteria for service as jurors might need to be reviewed.

26. SJ replied that in relation to the recommendations made in the Report on Jurors, DoJ was preparing a working draft Bill with a view to consulting the public including the legal professional bodies, relevant stakeholders and the Judiciary on the legislative proposals as soon as practicable.

27. The Deputy Chairman noted that, among other things, paragraph 1.8 of the Report on Jurors stated that all criminal trials in the Court of First Instance ("CFI") had to be held with a jury and that the most serious offences were tried in CFI and not in an inferior court. He enquired, given that the draft National Security Law might come into effect in late June 2020, whether persons suspected of having committed an offence under the draft National Security Law would be given a jury trial.

28. SJ said that, as the Deputy Chairman's question was not related to the recommendations made by LRC in the Report on Jurors, it was not appropriate for LRC to make any response.

Recommendations implemented in full

Report on "Bail in criminal proceedings"

29. Dr KWOK Ka-ki noted that the recommendations in LRC's report on "Bail in criminal proceedings" published in 1989 had been implemented by the Criminal Procedure (Amendment) Ordinance in 1994. One of the key recommendations in that report was that all offences should be bailable, and there should be no offences or classes of persons in respect of which bail could never be granted. Dr KWOK expressed concerns whether bail would be granted for persons suspected of having committed an offence under the draft

Action

National Security Law, and if not, whether LRC would review its recommendations made in its report on "Bail in criminal proceedings".

30. Dr KWOK Ka-ki and Dr Fernando CHEUNG considered that as the various issues relating to the draft National Security Law would have profound and lasting impact on Hong Kong, it had aroused grave concerns among members of the public. They considered that LRC should state its views on these issues as they might seriously undermine the rule of law in Hong Kong.

31. In response, SJ advised that as the subjects mentioned above should fall under the responsibilities of the relevant B/Ds, it was not appropriate for LRC to give response.

III. The Law Reform Commission of Hong Kong's Report on Review of Substantive Sexual Offences

(Hard copy issued to Members on 5 December 2019 - The Law Reform Commission of Hong Kong's Report on Review of Substantive Sexual Offences and its executive summary

LC Paper No. CB(4)715/19-20(03) - Paper on the Law Reform Commission of Hong Kong's Report on Review of Substantive Sexual Offences prepared by the Legislative Council Secretariat (background brief))

32. The Chairman welcomed representatives from LRC, the Sub-committee and the Hong Kong Bar Association ("the Bar Association"). At the invitation of the Chairman, Mr Peter DUNCAN, SC, Chairman of the Sub-committee, briefed members on the main points about the Report on Sexual Offences issued by LRC in December 2019.

33. Members noted that the Sub-committee was appointed in 2006 to review the law relating to sexual and related offences in Hong Kong. The overall review of substantive sexual offences was the major part of the Sub-committee's study under its terms of reference. To-date, the Sub-committee had issued three consultation papers. In addition, LRC published a report to provide its final recommendations for the proposed offences of voyeurism and non-consensual upskirt-photography in April 2019. The Report on Sexual

Action

Offences contained 71 recommendations made having regard to the responses received on the preliminary recommendations in the consultation papers.

34. Dr Fernando CHEUNG welcomed LRC's adoption of the mainstream views collected in the past consultation exercises, including the call for clearer definitions for sexual offences and strengthened the protection for vulnerable persons such as minors and mentally incapacitated persons. However, Dr CHEUNG and Mr CHAN Chi-chuen raised concerns about the possible delays of implementation of the recommendations, and queried whether the Administration would give priority to implementing certain recommendations.

35. In response, Mr Peter DUNCAN, SC pointed out that the Sub-committee had worked in accordance with its terms of reference, and although the Sub-committee would welcome the implementation of LRC's recommendations as soon as possible, it would be a matter for the Administration to decide whether and when they would be implemented. That said, LRC had published the Report on Voyeurism in April 2019 ahead of the remaining work of the Sub-committee in order to address the society's pressing need for the new offences recommended in that report, and SB had already planned to discuss this report with the Panel on Security.

36. Mr CHAN Chi-chuen appreciated the efforts made by the Sub-committee and LRC in publishing the Report on Sexual Offences. However, he raised concerns about the overall approach adopted by the Sub-committee and LRC in conducting the review of sexual offences, which had led to the unduly long time taken. Mr CHAN questioned in particular about the effectiveness of breaking down the review into four parts with multiple consultation papers and reports issued. In response, Mr Eric CHEUNG, member of the Sub-committee, said that a comprehensive approach was of benefit and required for this review since it was an exercise covering a large number of sexual offences in different areas.

37. Dr Junius HO queried whether the proposed abolition of certain existing offences, such as indecent conduct towards a child under the age of 16, would undermine the protection of minors. In response, Mr Eric CHEUNG said that as a number of the new offences proposed to replace the existing ones would broaden the protection coverage, those offences mentioned by Dr HO would be covered and hence could be abolished.

38. Mr Randy SHEK, representative of the Bar Association, expressed support for the recommendations in the Report on Sexual Offences, which had taken on board many of the comments made by legal professional bodies. The Bar Association was of the view that the recommendations would modernize the relevant legislation to, among other things, bring the current sexual offences

Action

into line with Article 25 of the Basic Law which stated that all Hong Kong residents shall be equal before the law.

39. Mr Randy SHEK further said that the Bar Association supported the gender-neutral approach adopted in reforming the sexual offences. It also called on the Administration to consider extending the offence of incest to cover step parents and foster parents, and to extend the proposed new offence of trespass with intent to commit a sexual offence to cover a person who formed such intent after entering premises. Mr SHEK also expressed the Bar Association's support for the new offences relating to voyeurism, saying that LRC's recommendations would address the current legal vacuum for acts such as non-consensual upskirt-photography.

40. The Chairman welcomed the recommendations made in the Report on Sexual Offences. She pointed out that, instead of seeking to punish offenders, the sexual offences and respective penalties should focus more on their effect on prevention, education and rehabilitation of offenders.

(At 6:25 pm, the Chairman announced that the meeting be extended for 15 minutes. At 6:33 pm, she further extended the meeting for 15 minutes to end at 7:00 pm.)

IV. Proposed framework for cooperation with the Mainland in insolvency matters

(LC Paper No. CB(4)715/19-20(04) - Administration's paper on proposed framework for cooperation with the Mainland in corporate insolvency matters)

41. The Chairman welcomed the representatives of the Administration and the Bar Association to attend the meeting. The Chairman mentioned The Law Society of Hong Kong's comment that as it had not been given papers on the item early enough, it could not contribute and to assist the discussion. She reminded the Administration to follow the agreed practice that it should provide papers at least five clear days before the relevant Panel meeting for items with at least three weeks' notice.

42. Deputy Solicitor General (Policy Affairs) of DoJ ("DSG(P)) briefed members on the proposed framework for cooperation between HKSAR and the Mainland on recognition of and assistance in corporate insolvency matters ("the

Action

proposed framework") as set out in the Administration's paper (LC Paper No. CB(4)715/19-20(04)).

43. Mr Jeremy BARTLETT, SC, of the Bar Association, said that the Bar Association supported in principle the creation of a mutual recognition framework, but reserved its position on whether this should involve a "light touch" arrangement relying only upon the common law or something more formal, and would provide further comments during the consultation process.

44. The Chairman expressed her support for the proposed framework. She said that, given the difference between the Mainland and HKSAR in their legal systems, stakeholders of one jurisdiction involved in cross-border insolvency cases were facing difficulties in executing liquidation orders made by the other jurisdiction. She suggested that, in discussing with the Mainland authorities over the proposed framework, the Administration should bear in mind Hong Kong's common law system and tradition which should be adequately reflected in the framework.

45. Dr Junius HO asked whether the Administration would provide further details regarding the timeframe and proposed framework, in particular on issues such as the reciprocal enforcement of judgments between the two jurisdictions, to the AJLS Panel. In response, DSG(P) said that as discussions with the Supreme People's Court of the People's Republic of China was still ongoing, more details would be available in due course and further consultation with stakeholders would be conducted. She added that apart from dealing with issues on corporate insolvency, the proposed framework would also seek to facilitate the restructuring of debts between the two places.

V. Any other business

46. There being no other business, the meeting ended at 6:51 pm.