

立法會
Legislative Council

LC Paper No. CB(4)977/20-21
(These notes have been seen by
the Administration)

Ref: CB4/PL/AJLS

Panel on Administration of Justice and Legal Services

**Notes of informal meeting for policy briefing by videoconferencing
held on Monday, 4 January 2021, at 4:30 pm**

- Members present** : Hon CHEUNG Kwok-kwan, JP (Chairman)
Hon Martin LIAO Cheung-kong, GBS, JP (Deputy Chairman)
Hon Starry LEE Wai-king, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Elizabeth QUAT, BBS, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon YUNG Hoi-yan, JP
- Members absent** : Hon Paul TSE Wai-chun, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Jimmy NG Wing-ka, BBS, JP
Hon Holden CHOW Ho-ding
Hon Wilson OR Chong-shing, MH
Hon Vincent CHENG Wing-shun, MH, JP
- Public Officers attending** : Department of Justice

Ms Teresa CHENG, SC
Secretary for Justice

Mr Wesley WONG, SC
Solicitor General

Ms Christina CHEUNG
Law Officer (Civil Law)

Ms Gracie FOO
Director of Administration & Development

Ms Linda LAM
Law Officer (International Law) (Acting)

Ms Fanny IP
Law Draftsman (Acting)

Mr William TAM, SC
Director of Public Prosecutions (Acting)

Dr James DING
Commissioner of Inclusive Dispute Avoidance and
Resolution Office

Administration Wing, Chief Secretary for
Administration's Office

Mr Daniel CHENG, JP
Director of Administration

Ms Jennifer CHAN, JP
Deputy Director of Administration (2)

Legal Aid Department

Mr Thomas Edward KWONG, JP
Director of Legal Aid

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

Staff in attendance : Ms Clara TAM
Senior Assistant Legal Adviser 2

Mr Raymond SZETO
Senior Council Secretary (4)6

Miss Janice HO
Council Secretary (4)6

Action

**Briefing by the Secretary for Justice and the Director of Administration
on the Chief Executive's 2020 Policy Address**

[LC Paper Nos. CB(4)314/20-21(03) to (04)]

The Chairman reminded members that as this was an informal meeting, the Rules of Procedure of the Legislative Council ("LegCo") would not apply and the privileges and immunities provided by the LegCo (Powers and Privileges) Ordinance (Cap. 382) would not be available to the participants.

2. The Secretary for Justice ("SJ") briefed members on the 2020 policy initiatives of the Department of Justice ("DoJ") as set out in LC Paper No. CB(4)314/20-21(03). Director of Administration ("DoA") then briefed members on the policy initiatives of the Chief Secretary for Administration's Office, as well as the Legal Aid Department ("LAD") in relation to the Judiciary and legal aid as set out in LC Paper No. CB(4)314/20-21(04).

Views and concerns raised by members

Vision 2030 for Rule of Law

3. Members enquired about the progress of the proposed setting up of a rule of law database in Hong Kong with objective data and relevant information ("the database"), which was one of the initiatives under Vision 2030 for Rule of Law ("Vision 2030"). Some members enquired what objective indicators would be included in the database.

4. SJ advised that the database aimed to provide indicators for objective assessment of the rule of law in Hong Kong. While the preparation work for the database was in progress, the contents of the database contemplated included information such as the number of legal aid cases and judicial review cases, as well as the channels available for lodging administrative appeals against the Administration's decisions. This information could also provide an assessment on the transparency in government. The idea could be shared with the neighbouring jurisdictions for reference and discussion.

Task Force on Vision 2030

5. In response to members' enquiries about the progress of work undertaken by the Task Force on Vision 2030 set up by DoJ, SJ advised that the Task Force had been studying the implementation of rule of law in various jurisdictions with a view to identifying the common denominators or elements essential to the rule of law at various places. It was expected that these elements, together with the database, would provide the tools for objective assessment of the rule of law in Hong Kong.

6. Noting that members of the Task Force comprised exclusively of experts/scholars in arbitration or international laws, some members enquired whether experts/scholars in the Constitution of the People's Republic of China ("the Constitution") and the Basic Law would be included. In response, SJ advised that members of the Task Force, appointed on a two-year term, were all renowned internationally and in their home countries in legal practice and the implementation of rule of law. Whilst the appointment of experts/scholars in the Constitution, Basic Law and constitutional law to the Task Force could be considered as suggested by members, SJ pointed out that they might also be invited to join subcommittees formed under the Task Force to study special topics as necessary.

Promotion of the Constitution, Basic Law and the National Security Law

7. Members considered that there were insufficient initiatives under Vision 2030 for the promotion of the Constitution, Basic Law and the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("NSL"), and urged the Administration to strengthen its initiatives in those areas.

8. In response, SJ advised that in November 2020, the Basic Law 30th Anniversary Legal Summit was held to give the public an understanding of the origin of the Basic Law. A collection of the Legal Summit's proceedings would be published in the first half of 2021. SJ further said that it was planned that the annotations of authoritative sources and official documents relating to the drafting and legislative intent of the Basic Law would be published in 2022 to celebrate the 25th anniversary of the establishment of HKSAR. These publications would present the materials relating to the legislative intent of the Basic Law and relevant case law. Besides, SJ indicated that DoJ had recently delivered a talk to the Education University of Hong Kong on the Basic Law and would continue to promote the Basic Law to members of the public.

9. SJ stressed that the Administration was well aware of its responsibilities under Articles 9 and 10 of NSL to take necessary measures to strengthen public communication, guidance, supervision and regulation over matters concerning national security, and to promote national security education in schools and universities and through social organisations, the media, the internet and other means to raise the awareness of Hong Kong residents of national security and of the obligation to abide by the law. In this regard, DoJ had commenced work on collaborating with local institutions on taking forward such measures, including the compilation of relevant teaching materials to facilitate school teachers in teaching NSL-related knowledge and the Basic Law including the constitutional order.

LawTech

10. Members enquired about the purpose of the Hong Kong Legal Cloud ("HKLC"), the progress of development and whether HKLC would be managed and operated as a government service. SJ replied that HKLC aimed to provide an online facility to provide safe, secure and affordable data storage services for the legal and dispute resolution practitioners in Hong Kong who were currently using various private cloud services for data storage. Whilst HKLC was still at its early stage of planning, it was envisaged that it would be operated and maintained by private contractors rather than as a government service.

11. In response to members' enquiry about HKLC's compatibility with the online dispute resolution and deal making platform operated by the eBRAM Centre, SJ advised that the compatibility issue might be considered after HKLC had been implemented with more experience gained.

12. Members noted that the LawTech Fund, set up with funding support from the second round of Anti-epidemic Fund, was to assist small and medium-sized law firms and barristers' chambers in procuring and upgrading information technology systems and arranging their staff to attend LawTech training. They enquired whether the Fund could be used to cater for other general needs of the legal sector. In response, SJ advised that the deployment of the LawTech Fund for the development of HKLC was being explored.

Legal education and training

13. Members pointed out the shifting landscapes in international trade and investments precipitated by notable events, such as the United Kingdom's withdrawal from the European Union ("EU") and the in-principle agreement on the China-EU Comprehensive Agreement on Investment reached recently. As these developments would bring new opportunities and challenges to the legal and dispute resolution sector in Hong Kong, they considered that the contents of relevant legal education and training programmes should be updated to equip practitioners in respective fields with necessary knowledge and skills.

14. SJ agreed that legal education and training should be reviewed with a view to broadening international horizon of law students and legal practitioners to adapt to the changing landscapes of international trade and investments. In that regard, the Standing Committee on Legal Education and Training ("SCLET") was empowered to keep under review legal education and training in Hong Kong and make recommendations thereon. It was expected that SCLET would take these new developments into account.

15. SJ further advised that the Administration would strengthen global and regional cooperation through hosting decision-making meetings of international organizations such as the United Nations Commission on International Trade Law, promoting international exchange and collaboration, and participation in international organizations.

16. Members enquired about the arrangements of the inaugural Greater Bay Area ("GBA") Legal Professional Examination to be held in January 2021 amidst the COVID-19 pandemic. In response, SJ advised that whilst the date and arrangement for the GBA Legal Professional Examination might change due to the latest situation of the COVID-19 pandemic, an online course providing concise overview of the subjects covered in the examination had been conducted by the Ministry of Justice in December 2020. DoJ would also soon discuss with the Supreme People's Court on providing practical training for candidates who passed the GBA Legal Professional Examination to enrich their experience for practising in the Mainland.

Conduct and professional developments of the Government Counsel Grade staff

Conduct of Government Counsel

17. Some members referred to cases of alleged misconduct of Government Counsel ("GCs"), including those alleged to have given support to the social events in 2019 and a GC for writing a book teaching youngsters how to escape from being prosecuted. They expressed concerns how DoJ could ensure that a high standard of conduct would be maintained by GCs, especially those who were appointed to take up important tasks such as promotion of the Constitution, Basic Law and NSL.

18. In response, SJ stressed that DoJ took a serious view of ensuring that all GCs, including the new intakes and those considered for promotion, abide by Article 99 of the Basic Law and uphold all the core values enshrined in the Civil Service Code ("the Code"), including commitment to the rule of law, honesty, integrity, objectivity, impartiality, political neutrality, dedication, professionalism and diligence, like all other civil servants. Any breach of the Code or misconduct established would be taken very seriously and there had been well-established disciplinary procedures in place to handle such cases. Depending on the gravity of the misconduct or criminal conviction, under formal disciplinary proceedings, sanctions could range from reprimand to dismissal. At the same time, DoJ would take measures to cultivate in GCs and other staff of DoJ a sense of what constituted appropriate conduct and behaviours expected of all civil servants.

Professional development of Government Counsel

19. Members noted that training programmes on the Constitution, the Basic Law and NSL were provided to GCs on a regular basis, and all GCs joining DoJ after 2017 were required to go through a four-day programme covering the legal principles of Chinese Law. They considered that a four-day programme was inadequate to cultivate an in-depth knowledge in those subjects and that the training on NSL should be expanded to cover all civil servants.

20. Some members considered that, in view of the shifting landscapes in international trade and investment aforementioned mentioned in paragraph 13 above, GCs with backgrounds in international law and comparative law should be recruited while relevant training on those subjects as well as arbitration, trade and investments should be provided to serving GCs. They also expressed that, as the civil law system

was a more popular legal system worldwide vis-à-vis the common law system, relevant training should also be provided to GCs to strengthen global and regional cooperation and reinforce Hong Kong's status as a regional hub of international legal services.

21. SJ agreed to members' views and advised that GCs would continue to be provided with relevant legal training, including training opportunities outside Hong Kong, to broaden their horizons and better equip them to meet new challenges.

22. Members considered that criminal prosecutions relating to the social events in 2019 as well as NSL-related offences called for specialized legal knowledge. They expressed concerns whether it was due to the lack of such knowledge among GCs which had led to the delay in prosecution cases, and queried whether the problem could be solved by temporary staffing arrangement within DoJ.

23. SJ replied that, in accordance with Article 18 of NSL, DoJ had established a specialised prosecution division responsible for the prosecution of offences endangering national security and other related legal work. SJ further advised that whilst GCs in the Prosecutions Division each has his/her own specialty, other GCs in DoJ were also multi-skilled and could apply their skills and knowledge to provide advice.

Handling of criminal prosecutions by the Department of Justice

24. Members were concerned about the serious delays in the handling of some prosecution cases relating to the Occupy Movement in 2014 as well as the social events in 2019, and enquired whether DoJ's staffing was sufficient to clear the backlog expeditiously.

25. In response, SJ stressed that all matters referred to DoJ for advice had all along been duly followed up. Where necessary, DoJ would make appropriate staffing arrangements to ensure such matters could be handled in a timely manner. She further advised that, in 2019, DoJ had been able to give advice on over 90% of the cases within 14 days. Notwithstanding the above, SJ pointed out that the time required for completion of prosecution cases varied widely owing to multifarious factors, such as the time required for further investigation by law enforcement agencies and/or pre-trial procedures communications between parties to the case, which would affect the progress of the proceedings.

26. SJ also advised that the staff establishment of DoJ should be sufficient to cope with the present workload, whilst recruitment exercises were conducted from time to time to fill existing vacancies. Nevertheless, when necessary, staffing proposals would be submitted to the Legislative Council for consideration of the creation of new posts in DoJ.

Legal assistance for non-refoulement claimants

27. Members noted that the number of judicial review ("JR") cases had increased sharply in recent years, and the applicants in quite a number of such cases had been granted legal aid. Some members were particularly concerned about the legal aid granted to JR cases arising from non-refoulement claimants, which could consume much of DoJ's and the Judiciary's resources. LAD was urged to be more stringent in screening such applications to avoid waste of public resources.

28. Director of Legal Aid explained that the actual number of legal aid applications relating to JR which had been approved only constituted a small proportion of the total number of legal aid applications received. Furthermore, as the number of leave granted by the Judiciary on JR from non-refoulement claim-related applications was small, and counsel of LAD could make reference to precedent judgments when considering the merits of such legal aid applications, the number of legal aid certificates actually granted was very small.

29. A member enquired about the details of a case, as reported in the press, that DoJ had reached a settlement agreement with non-refoulement claimants detained at the Castle Peak Bay Immigration Centre in a number of cases. In response, SJ advised that she would not comment on individual cases. Law Officer (Civil Law) supplemented that details could not be divulged due to confidentiality undertaking involved.

Concerns relating to the Judiciary

Special courts to expedite the handling of case backlogs

30. Members expressed concerns about the accumulation of case backlogs in the Judiciary, especially those cases relating to non-refoulement claims, the Occupy Movement in 2014 and the social events in 2019, and suggested that special courts should be set up to expedite the handling of case backlogs. The Administration was invited to give its views.

31. SJ said that DoJ was not in a position to comment on members' suggestions of setting up the special courts. Nevertheless, if it was decided that special courts be set up, DoJ would cooperate with the Judiciary to expedite the judicial process.

Sentencing commission or council

32. Members expressed that, while judicial independence was well respected by all in Hong Kong, there was a growing number of complaints directed at certain court judgments for being biased, especially the judgments on sentencing of persons convicted of crimes relating to the social events in 2019. They considered that the situation smacked of a lack of transparency in the judicial process and invited SJ for her views on the possible reform which should be carried out in the Judiciary and the suggestions of setting up a sentencing commission or council to issue binding sentencing tariffs on all criminal offences

33. SJ advised that it was not appropriate for her to address issues relating to the Judiciary. As regards members' concerns about sentencing principles she pointed out that the judicial system of Hong Kong was highly transparent, underpinned by open court proceedings and the publication on the Judiciary's website of court judgments setting out the legal and factual basis upon which conclusions were drawn.

34. SJ further stated that sentencing is exercised by the court's independent judicial power and it is the court's duty to impose an appropriate sentence in each case after taking into account the relevant sentencing principles, the circumstances of the offence and the background of the offender. There is a well-established appeal mechanism for DoJ to apply to the Court of Appeal ("CA") under section 81A of the Criminal Procedure Ordinance (Cap. 221) for review of sentence ("section 81A application") and apply for reviews of the magistrates' decisions under section 104 of the Magistrates Ordinance (Cap. 227). The CA has heard and decided eight cases of section 81A application and set out detailed reasons and principles for its decisions in the judgments which bind the lower courts. A number of applications that the CA had given judgments in November and December 2020 were cases in relation to unlawful assemblies and violent acts. In some of these judgments, the CA reiterated the sentencing principles as set out in *Secretary for Justice v Wong Chi Fung, Law Kwun Chung and Chow Yong Kang Alex* [2018] HKCFA 4 ("*Wong Chi Fung* case") and emphasised that the principles must be actually followed instead of just quoting the *Wong Chi Fung* case without applying it. The CA once again extracted the legal principles in the *Wong Chi Fung* case to remind all parties concerned, including the lower courts, of the need to consider the gravamen seriously instead of just paying lip service to it.

35. SJ also pointed out that members of the public have the right to express their views on court decisions and related matters within the bounds of the law. Personal attacks and insults against judges would not be tolerated.

Other concerns about the Judiciary

36. Members reiterated their concerns that the appointment of non-permanent judges from other common law jurisdictions to sit on the CFA as recommended by the Judicial Officers Recommendation Commission had, in the past, only included judges (or retired judges) from the United Kingdom, Australia, New Zealand and Canada. They suggested that judges from more varied common law jurisdictions should be considered.

37. Members also expressed concerns about the unduly long time taken by certain judges in handing down the written judgments, and an example was quoted in which the written judgment on a JR case was handed down almost two years after the court hearing had completed.

38. DoA advised that members' concerns would be relayed to the Judiciary.

Follow-up actions by the Administration

39. The Administration was requested to provide the following information:-

- (a) the number of JR cases relating to non-refoulement claims that received legal aid; and
- (b) a breakdown of the types of civil cases for which legal aid applications had been received in 2019.

(Post-meeting note: The Administration's supplementary information was circulated to members on 19 January 2021 via LC Paper No. CB(4)408/20-21(01).)

40. There being no other business, the informal meeting ended at 6:03 pm.

Panel on Administration of Justice and Legal Services

**Proceedings of informal meeting
for policy briefing by videoconferencing
held on Monday, 4 January 2021, at 4:30 pm**

Time Marker	Speaker(s)	Subject(s)	Action required
Briefing by the Secretary for Justice and the Director of Administration on the Chief Executive's 2020 Policy Address			
000158-001515	Chairman Administration	Briefing by the Secretary for Justice on policy initiatives by the Department of Justice ("DoJ")	
001516-001827	Chairman Administration	Briefing by the Director of Administration on policy initiatives by the Chief Secretary for Administration's Office and the Legal Aid Department	
001828-002936	Chairman Deputy Chairman Administration	Vision 2030 for Rule of Law LawTech	
002937-003725	Chairman Mrs Regina IP Administration	Concerns relating to the Judiciary Legal assistance for non-refoulement claimants The Administration was requested to provide supplementary information as set out in paragraph 39	Administration
003726-004906	Chairman Ms Starry LEE Administration	Concerns relating to the Judiciary Handling of criminal prosecutions by DoJ	
004907-010229	Chairman Dr Priscilla LEUNG Administration	Legal education and training Conduct and professional developments of Government Counsel ("GCs")	
010230-011119	Chairman Dr Junius HO Administration	Legal education and training Vision 2030 for Rule of Law Concerns relating to the Judiciary	
011120-011959	Chairman Ms Elizabeth QUAT Administration	Handling of criminal investigation by DoJ Conduct and professional developments of GCs	

Time Marker	Speaker(s)	Subject(s)	Action required
		Legal assistance to non-refoulement claimants Handling of criminal prosecutions by DoJ Concerns relating to the Judiciary	
012000-012644	Chairman Dr Priscilla LEUNG Administration	Concerns relating to the Judiciary Handling of criminal prosecutions by DoJ	
012645-013447	Chairman Ms YUNG Hoi-yan Administration	Handling of criminal prosecutions by DoJ Legal assistance for non-refoulement claimants	
013448-013507	Chairman	Closing remarks	

Council Business Division 4
Legislative Council Secretariat
11 May 2021