

**Legislative Council**  
**Panel on Administration of Justice and Legal Services**

**Work of Bailiffs**

**Introduction**

This paper gives an overview of the duties of Bailiffs and addresses the concerns of staff in performing their duties, particularly in seizure of goods.

**Duties of Bailiffs**

2. The duties of Bailiffs are prescribed in different Ordinances, Rules and Orders, such as the High Court Ordinance (Cap. 4), the District Court Ordinance (Cap. 336), the Bankruptcy Ordinance (Cap. 6), the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), the Companies Ordinance (Cap. 32) and the Criminal Procedure Ordinance (Cap. 221). As an illustration, section 38A of the High Court Ordinance (Cap. 4), provides for a general description of the work of Bailiffs as follows :

“38A. There shall be a Bailiff of the High Court together with such assistant Bailiffs as may be appointed, to effect, in accordance with rules of court, orders for committal and for service and execution of the process of the Court.”

Accordingly, Bailiffs are deployed for two main areas of work : service of summonses and legal documents and execution of court orders and judgments.

**Service of Summonses and Legal Documents**

3. Senior Bailiffs manage a team of Bailiff Assistants who are responsible for serving summonses and other important legal documents on parties as required by a court (including tribunals) or as requested by a person who is a party to litigation. Typical examples include Writs of Summons in civil proceedings, Magistrate’s summonses in traffic cases, Notices of Hearing in various courts, Notices of Trial in criminal cases, Summonses to witness, Subpoena, Interpleader Summons, and foreign process issued by foreign courts for service in Hong Kong.

4. This area of service has no particular issues of concern.

## Execution of Court Orders and Judgments

5. The most common court orders executed by Bailiffs are Writs of Possession, Writs of Fieri Facias and Warrants of Distress. As directed in these orders, Bailiffs are authorized to :

- (a) seize goods and chattels at a value equivalent to the judgment debts plus the incidental expenses of the execution; and/or
- (b) repossess land/premises.

## Difficulties in Making Seizure

6. Writs of Fieri Facias and Warrants of Distress quite often involve seizure of the judgment debtors' goods and chattels in satisfaction of the judgment debt. In the course of levying execution, a Bailiff sometimes faces a situation in which the judgment debtor denies ownership of certain goods on his premises. A third party may claim ownership of those goods. In the absence of documentary proof, the Bailiff will face a dilemma on the spot. In the words of Suffiad J in *Fu Lok Man James v Chief Bailiff of the High Court* [1998]2 HKC 15 :

“A bailiff very often finds himself in the position, when levying execution, that the goods are claimed by a third party. In such a situation, if the bailiff withdraws and it turns out that the goods were indeed the execution debtor's, he may be liable for breach of his duties in the execution. On the other hand, if he seizes the goods and it turns out to be in fact belonging to the claimant, he may be liable to an action by the claimant.”

7. There have been two cases in recent years in which the executing Bailiffs and the Chief Bailiff were sued for wrongful seizure. One case happened in 1995 : *Fu Lok Man James v Chief Bailiff of the High Court*, and the other was an Interpleader Summons in early 2002 arising from *Brand Farrar Buxbaum LLP v Samuel-Rozanbaum Diamond Limited and Samuel Rozenbaum Diamond (1992) Limited*.

## Common Law Protection

8. In both cases, the third parties were entitled to the goods seized. The executions were wrongful amounting to a trespass to the third parties' goods. However, both trial judges found that the executing Bailiffs had a unique common law defence. So, in *Fu Lok Man James v Chief Bailiff of the High Court*, Suffiad J said :

“The common law therefore has provided for a unique defence to bailiffs or other executing officers in such

situations that if the bailiff or executing officer has only made an honest mistake in executing the process of the court and in all the circumstances no “real grievance” or “substantial grievance” has been caused to a claimant beyond the mere entry and seizure of the goods, then the bailiff or executing officer should be protected from an action for damages. It would be otherwise if the bailiff or executing officer were guilty of insolent or oppressive conduct in excess of his duty and not justified by the writ of execution (see *Smith v Critchfield* [1885] QB 873 and also *Neumann v Bakeaway Ltd.* [1983]1 WLR 1016).”

9. Sakhrani J cited the above words of Suffiad J in *Brand Farrar Buxbaum LLP v Samuel-Rozenbaum Diamond Limited & another* (HCA 5191/98, 17 December 2002, unreported). In dealing with the approach of the Court in deciding whether a protection order for the Bailiff should be made, Sakhrani J said :

“I accept Mr. Lam’s [counsel for the Bailiff] submission. In my judgment the proper approach to adopt is whether the Claimant can show that it has a fairly arguable case that he can defeat the Bailiff’s unique common law defence. The Claimant has to show that it has a fairly arguable case of a ‘real’ or substantial ‘grievance’ caused to it beyond the mere entry and seizure of the goods.”

10. In both cases, the executing Bailiffs were found to have made an honest mistake in the execution of their duties and the claims against them for the wrongful detention and conversion of the third parties’ goods were dismissed.

11. It is clear that common law protection is available to executing Bailiffs if they have acted honestly without being insolent or oppressive in performing their duty. The execution of court orders require decisions to be made on the ground taking all the information available into consideration. A set of guidelines for executing officers have been drafted in consultation with staff. It would provide guidance on proper actions to be taken in different circumstances. In addition, each of the regional operating units has started regular experience sharing sessions among staff so that the knowledge and experience gained in execution exercises are shared. Hence, the Judiciary Administration does not envisage that statutory law would afford Bailiffs any greater protection than that currently available under the common law.

### **Gazetting of Bailiffs**

12. It has been proposed that the appointments of Bailiffs be gazetted in order to establish their legal authority and status.

13. The Judiciary Administration acknowledges that like other law enforcement officers, Bailiffs' powers and authority are sometimes challenged by the defendants at the time of their executing court orders. Legal advice has been obtained that notwithstanding the absence of statutory requirements for gazetting the appointments of Bailiffs, to do so may provide prima facie evidence of such appointments. This will be followed up.

### **Landlord and Tenant (Consolidation) (Amendment) Ordinance 2002**

14. This Amendment Ordinance was passed by the Legislative Council on 18 December 2002. Among other things, the Amendment Ordinance shortens the mandatory relief period from 28 to 7 days for tenants to pay up the rent in arrears before Bailiffs execute the Order for Possession. We expect that this measure would slightly increase the workload of the Bailiff service but we should be able to cope with our already streamlined working procedures.

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15. For the purpose of illustrating the improved efficiency of the Bailiff service, please see performance outcome at Appendix.

### **Conclusion**

16. The management of the Bailiff Grade are working together through regular meetings with staff to enhance the Bailiff service. Significant improvement to waiting times has been achieved and staff relationship enhanced. We would continue to deliberate and pursue together through our established channel any proposals, including those made by staff associations, that could further enhance efficiency and effectiveness.

Judiciary Administration  
January 2003

## Appendix

### Performance of Bailiff Service

		Year 2000 (monthly average)	Year 2001 (monthly average)	Year 2002 (monthly average)
Caseload	Warrant of Distress	749	684	839
	Writ of Possession	442	435	426
	Writ of Fieri Facias and others	1,211	975	891
No. of Bailiff		42	36	37

	Waiting time for execution (number of days)		
	December 2000	December 2001	December 2002
Warrant of Distress	11	16	7
Writ of Possession	23	25	13
Writ of Fieri Facias and others	13	16	8