

立法會

Legislative Council

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Panels on Administration of Justice and Legal Services and Manpower

**Minutes of joint meeting
held on Thursday, 19 June 2003 at 10:45 am
in the Chamber of the Legislative Council Building**

Members present : Members of Panel on Administration of Justice and Legal Services

Hon Margaret NG (Chairman)
Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon CHAN Kam-lam, JP
* Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP

Members of Panel on Manpower

Hon LAU Chin-shek, JP (Chairman)
Hon CHAN Kwok-keung (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon LEE Cheuk-yan
Hon CHEUNG Man-kwong
Hon LEUNG Yiu-chung
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon LEUNG Fu-wah, MH, JP

Members absent : Members of Panel on Administration of Justice and Legal Services

Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon Miriam LAU Kin-yea, JP
Hon TAM Yiu-chung, GBS, JP

Members of Panel on Manpower

Hon Cyd HO Sau-lan
Dr Hon LUI Ming-wah, JP
Hon CHAN Yuen-han, JP
Hon YEUNG Yiu-chung, BBS
Hon SZETO Wah
Hon Michael MAK Kwok-fung
Hon Frederick FUNG Kin-kee

* Also a member of Panel on Manpower

**Public Officers : Item III
attending**

Economic Development and Labour Bureau

Mr Matthew CHEUNG Kin-chung
Permanent Secretary for Economic Development and
Labour (Labour)

Labour Department

Mrs Jennie CHOR
Assistant Commissioner for Labour (Labour Relations)

Miss Bertha CHENG
Senior Labour Officer

Judiciary

Mr Wilfred TSUI
Judiciary Administrator

Mr Augustine L S CHENG
Deputy Judiciary Administrator (Operations)

Mr LAM Chui-kok
Acting Registrar, Labour Tribunal

**Attendance by : Federation of Hong Kong Industries
invitation**

Mr Clement CHEN
General Committee Member

Mr Roger TAM
Senior Administrative Officer

Clerk in attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in attendance : Mr Paul WOO
Senior Assistant Secretary (2)3

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I. Election of Chairman

Miss Margaret NG was elected Chairman of the joint meeting.

II. Confirmation of minutes of meeting
(LC Paper No. CB(2)2533/02-03)

2. The minutes of the joint meeting held on 6 May 2003 were confirmed.

III. Operation of the Labour Tribunal

(LC Paper Nos. CB(2)2527/02-03(01) - (02); 2533/02-03; 2622/02-03(01) - (02))

3. The Chairman provided an article on "Employment Tribunals Services" in the United Kingdom for members' information (tabled at the meeting and subsequently circulated to members vide LC Paper No. CB(2)2622/02-03(01)).

Consultation with employers' associations

4. The Chairman said that after receiving views from five employees' organizations on the operation of the Labour Tribunal (LT) at the joint meeting on 6 May 2003, the Panels agreed that major employers' associations should also be invited to submit or present views on the subject matter. In response to the invitation, the Federation of Hong Kong Industries (FHKI) had agreed to attend this meeting to make an oral representation on its written submission.

5. Mr Tommy CHEUNG asked whether employers' associations in the catering sector had been invited to give views. In response to the Chairman, the Clerk replied that in accordance with the practice of the Panel on Manpower, the following employers' associations had been invited to submit or

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present views to the Panels on the subject matter-

- (a) The Chinese General Chamber of Commerce;
- (b) The Chinese Manufacturers' Association of Hong Kong;
- (c) Federation of Hong Kong Industries; and
- (d) The Hong Kong General Chamber of Commerce.

The Clerk further said that in LC Paper No. CB(2)2094/02-03 issued to members of the Panels on 15 May 2003, members had been invited to note the four organizations which had been invited to submit or present views to the Panels and to suggest other organizations to be invited to give views on the subject matter. However, she had received no suggestions from members by the specified deadline. The Chairman said that should members wish to propose specific organizations to be invited to give views on the matter, they could inform the Secretariat so that arrangements could be made. She added that depending on the purpose and scale of a consultation exercise, a notice could be posted on the website of the Council to invite public views.

6. Mr Tommy CHEUNG said that a large number of labour disputes and employment-related claims involved employers and employees in the catering sector. He informed members that he would conduct an opinion survey among operators in the catering sector on the operation of LT and provide the outcome of the survey for the Panels' consideration.

(Post-meeting note : A letter dated 21 July 2003 from Mr Tommy CHEUNG to the Chairman of the joint meeting providing the findings of the survey conducted was circulated to members vide LC Paper No. CB(2)2886/02-03(01) on 23 July 2003)

Views of FHKI

(LC Paper No. CB(2)2527/02-03(02))

7. At the invitation of the Chairman, Mr Clement CHEN introduced the submission from FHKI, which set out the findings of a survey conducted by FHKI in early June 2003 on the operation of LT. The major findings of the survey were highlighted as follows -

- (a) of the 38 responding companies of FHKI which had experience in attending LT hearings, only 16 (42%) were satisfied with the overall operation of LT;
- (b) 14 (36.8%) of the respondents considered that the waiting time between registration of a case and hearing was too long. 23

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(60.5%) considered the hearing too cumbersome and time consuming. Adjournment and re-scheduling of cases had caused delay in the disposal of the cases;

- (c) another 23 respondents (60.5%) considered that the Presiding Officers (POs) and Tribunal Officers (TOs) did not handle the cases in an impartial manner. They appeared to be biased in favour of the employees; and
- (d) the responding companies also made a number of suggestions on how the operation of LT could be improved or enhanced. These included reducing the workload of TOs to enable them to investigate each case thoroughly and provide proper advice to the parties, and assigning specific time slots for the parties to report to LT.

Conciliation service provided by the Labour Department in resolving disputes
(LC Paper No. CB(2)2527/02-03(01))

8. At the invitation of the Chairman, Permanent Secretary for Economic Development and Labour (Labour) (PS for (EDL)(L)) briefed members on the paper prepared by the Labour Department (LD) which explained the conciliation service provided by LD and the arrangements for referring unsettled cases to LT.

Matters arising from the joint meeting on 6 May 2003

9. Judiciary Administrator (JA) and PS for (EDL)(L) gave responses to the following issues raised at the meeting on 6 May 2003 -

Waiting times

- (a) the Judiciary Administration had compiled a "Breakdown for cases of LT concluded with callover dates from 1 January 2002 to 31 December 2002" (tabled at the meeting and subsequently issued vide LC Paper No. CB(2)2622/02-03(02)). The breakdown showed the number of cases concluded within a period from one month to 16 months from the callover dates, the average number of hearings held, and the average time (in days) required for such cases to be concluded. Of the 9558 cases concluded, 6823 cases (71.3%) were concluded within one month;
- (b) in the three years from 2000 to 2002, the case of the longest duration took a total of 724 days to be concluded;

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Arrangements for callover hearings

- (c) the Judiciary Administration would consider arranging two different time slots, i.e. one in the morning and the other in the afternoon, for parties to attend callover hearings in LT so as to reduce inconvenience caused to the parties;

Standardization of forms and transmission of information between LD and LT

- (d) discussions were taking place between the Judiciary and LD on means to improve transmission of information between LD and LT to avoid duplicated efforts of the parties in providing the information. For instance, consideration was being given to combine certain existing forms for use by both LD and LT;

Night courts

- (e) the Judiciary remained of the view that night courts were not a cost-effective means for resolving claims because a night sitting could only last for two to three hours which, in most cases, was not sufficient for a case to be concluded. To improve the capacity of LT for handling the caseload, the Judiciary would look at the possibility of providing additional resources to the day courts;

Safeguard against witnesses collaborating in giving evidence

- (f) the Judiciary agreed that to avoid the possibility of collaboration in giving evidence, witnesses should not stay in the courtroom unless with the permission of the judge. The judge would give the necessary directives at appropriate juncture during the proceedings; and

Capping the maximum limit of costs payable by the employees

- (g) the Administration would examine the proposal to set a maximum limit of costs payable by the employees in the light of policy. The Administration would revert on its position on the proposal in due course.

Issues raised by members

Waiting times

10. Ms LI Fung-ying said that the dissatisfaction expressed by deputations

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representing both employees and employers about the long waiting times for cases to be settled at LT reflected that this was a genuine problem which should be addressed. Mr LEE Cheuk-yan said that the long waiting times had deterred many claimants from pursuing their cases in LT. Mr LEUNG Yiu-chung pointed out that employees who got a new job after filing their claims against their former employers could not afford to take leave from work to go through the cumbersome procedures of LT to pursue their claims. The consequence was that they would be forced to drop their claims or accept a settlement on terms which fell short of their legal entitlements.

11. Referring to the breakdown provided by the Judiciary Administration on cases concluded within different periods from the callover dates (paragraph 9(a) above refers), Mr LEE Cheuk-yan said that cases concluded within one month (amounting to 70% of the total) were cases settled through conciliation conducted by POs or TOs. For cases which eventually proceeded to trial, the time taken would be considerably longer.

12. JA responded that the target to shorten the waiting times for court users was a common aim for the different levels of courts. The situation had in fact improved significantly since 1999. For the 12 000 cases filed with LT in 2002, the average duration of time from appointment to filing of case was 12 days, while that from filing of case to callover hearing was 24 days. Hence, for the relatively simple cases which were completed at the stage of callover hearing, the average period of waiting time was 36 days. For cases proceeded then directly to trial, which took an average of another 32 days, the total waiting time was 68 days. For the more complicated cases which need to go through a pre-trial mention before proceeding to trial, the average total waiting time was 128 days. The overall average period for completion of cases was 56 days.

13. On the suggestion that a timeframe should be set for a case to be concluded, JA said that it was not proper to impose such a restriction which would unduly limit the ability of LT in administering justice. He added that the time required for cases to be disposed of would depend on the complexity of the cases and in no way reflect the efficiency of LT.

14. Ms Emily LAU said that more resources should be provided for enhancing the operation of LT so that cases could be resolved more expeditiously. JA replied that the Judiciary would allocate resources according to set priorities, and it had accorded priority to improving the services provided by LT. He informed members that since 1999, the number of day courts in LT was increased from 10 to 13, and the number of TOs was increased from 29 to 38.

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15. PS for (EDL)(L) added that the Administration and the Judiciary would jointly consider measures to improve and simplify the existing process for resolving labour disputes and claims.

16. On the question of expediting the proceedings of LT, the Chairman suggested that reference could be made to the Pilot Scheme for the Reform of Ancillary Procedures in Matrimonial Proceedings which aimed to improve efficiency of the existing ancillary relief proceedings.

Conciliation undertaken by LD and LT

17. Ms LI Fung-ying and Mr LEUNG Fu-wah considered that for cases referred from LD to LT, it was not necessary for POs and TOs of LT to try to resolve the claims through conciliation, since conciliation officers of the Labour Relations Division (LRD) of LD had already attempted conciliation but failed to bring about a mutually acceptable settlement for both parties. Conciliation officers of LRD should also have explained to both parties the relevant provisions of the Employment Ordinance and the rights and obligations under the Ordinance, and analysed the crux of the dispute in question. Ms LI and Mr LEUNG opined that as the purpose of setting up LT was to provide an expeditious, cheap and simple way for the settlement of disputes and claims, LT should not duplicate the conciliation efforts of LRD but confine itself to adjudication so as to achieve a speedy settlement of the claims. This would be to the benefit of the parties concerned.

18. JA explained that LT had a statutory duty to conduct conciliation prior to hearing a claim. This statutory role was stipulated under section 15(1) of the Labour Tribunal Ordinance which stipulated that LT should not hear a claim until a certificate in the prescribed form signed by a TO or an authorized officer (i.e. the LRD's conciliation officer) was filed or produced. Whether the existing role of LT should be changed was a matter of policy consideration for the Administration.

19. In reply to the Chairman's enquiry about the success rate of the conciliation service offered by LRD, PS for (EDL)(L) advised that the settlement rates for 2000, 2001 and 2002 were 61.8%, 64% and 63.2% respectively, while that for the first five months of 2003 was 64.5%. He added that the unsettled cases were referred either to the Minor Employment Claims Adjudication Board (MECAB) or LT. The ratio of cases referred to MECAB/LT was about 1:5.

20. JA informed members that of the 12 000 cases handled by LT in 2002, 1 364 were settled by TOs through mediation, while 5 192 cases were settled by POs during the hearings.

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Callover hearings and pre-trial mentions

21. Mr LEE Cheuk-yan expressed the view that callover hearings and pre-trial mentions prolonged the length of the trial proceedings and could be dispensed with.

22. JA said that LT performed the function of an investigative tribunal. For more complicated cases, PO would set the matter down for pre-trial mention for the purpose of examining completeness of the evidence or availability of documents to decide whether the case was ready to proceed to trial. As evidential and documentary matters were examined and sorted out during a pre-trial mention, the trial proceedings could be expedited.

23. Acting Registrar, Labour Tribunal supplemented that with the increased complexity of the cases, the parties might not have been giving the TOs all the relevant documents and evidence before the callover hearing. Some parties might also be uncooperative and refuse to produce the relevant information or evidence until the callover hearing. Moreover, some parties might raise new issues or claims at the callover hearing. Under such circumstances, it would be necessary for the PO to deal with such matters in pre-trial mention before the case was set down for trial.

24. Mr LEE Cheuk-yan opined that callover hearings and pre-trial mentions were time-consuming and should not become a normal practice for handling claims. He said that a major proportion of the cases were not complicated, as indicated by the fact that more than half of the cases in 2002 were settled by POs and TOs through conciliation. He considered that the preferred approach was to strengthen the training of TOs so as to enhance their investigative function, thereby reducing the need for callover hearings and pre-trial mentions.

Handling of cases by POs and TOs

25. Referring to the comments expressed by employees' and employers' associations that POs and TOs did not discharge their duties in an impartial manner, JA said that this was far from the truth. He reiterated that LT was obliged by law to operate an informal and inquisitorial procedure with no legal representation allowed. POs and TOs had an important duty to explain the law, the procedure of LT, the issues involved in the dispute, and the possible consequences of continuous litigation to the parties concerned. This might be the reasons behind the misconception that POs and TOs were biased in favour of or against certain parties, or intended to force them to reach settlement.

26. Mr LEUNG Yiu-chung said that more than half of the cases handled by LT had been disposed of by conciliation. He opined that to address the concern that POs and TOs had pressurized the parties to settle by conciliation,

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the Judiciary should conduct a study on such cases to analyse the factors accounting for the parties' willingness to settle the claims after the conciliation.

27. Mr Tommy CHEUNG asked whether all the documentary information provided by a party to the TO would be passed to the PO for the latter's consideration if the case proceeded to trial.

28. JA responded that any written information provided to the court formed part of the court's documents and would be kept safely in the relevant case files. He assured members that any documentary information provided to TOs in the course of investigation would be properly handled and made available to POs as the case proceeded to trial.

29. Mr Kenneth TING said that in some cases, the terms of settlement included ex-gratia payment made by an employer which was additional to the employee's entitled benefits under the law. The PO should explain the nature of the different payments awarded, instead of simply stating that an award was made in favour of the employee, in the judgment.

Complaints mechanism

30. Mr Tommy CHEUNG said that he was aware of a case where the PO had suggested to the claimant, whose claims against his employer had been refused, that he could take other courses of action against the employer in pursuing compensation. Mr CHEUNG asked whether such conduct of the PO was appropriate. The Chairman opined that it would not be appropriate for JA to comment on the conduct of judges.

31. Mr Tommy CHEUNG asked what action had been taken by the Judiciary to inform members of the public of the proper channel for lodging complaints against the conduct of POs.

32. JA replied that there was in place a proper mechanism for handling complaints against the conduct of judges and judicial officers. The Judiciary had issued a leaflet in May 2003 which set out the procedure for lodging a complaint against the conduct of a judge and the mechanism for handling such complaints. He said that copies of the leaflet were made available at the various courts, including LT, for the information of the public.

Forms and documents used by LD and LT

33. In response to Mr LEUNG Fu-wah's question on the forms and documents prepared by LD in relation to referring unsettled claims to LT, PS for (EDL)(L) said that such papers included the claim form completed by the claimant when filing his claim at the LRD, the referral memorandum to LT, the relevant LT forms completed by the conciliation officer of LRD, and the

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documents provided by the parties during the process of conciliation. A list of such documents was set out in paragraph 8 of the paper provided by LD (LC Paper No. CB(2)2527/02-03(01)).

34. PS for (EDL)(L) further said that the administrative process of conciliation conducted by LRD and the judicial process of adjudication by LT were different procedures for resolving labour dispute cases. When the parties failed to reach a settlement after conciliation at LRD, the case could be referred to LT. JA added that as LT had authority to inquire into, hear and determine claims under its jurisdiction, POs and TOs could require the parties to produce any records or documents which they considered to be relevant to the claim in question. Such records or documents might not have been provided to the conciliation officers of LRD.

35. PS for (EDL)(L) and JA said that the Administration and the Judiciary would consider standardizing certain forms for use by both LD and LT and introducing measures to facilitate efficient transmission of information between LD and LT.

JA & Admin

Assistance rendered to employees in insolvencies or default payment cases

36. Mr Andrew CHENG said that in insolvency cases or cases where the employers had defaulted payment despite an order made by LT, the employees were very often faced with the difficulty of getting their entitled compensation such as arrears of wages and other statutory or contractual benefits, particularly for those employees who failed to meet the eligibility criteria for legal aid. In many cases, the assistance of bailiffs was sought for the seizure of goods and chattels from the employers for the settlement of the judgment debts. In this connection, Mr CHENG enquired about the success rates of bailiffs in executing the relevant court orders.

37. JA replied that the effective rate (i.e. chances of seizure of goods and chattels being sufficient to pay off the judgment debts) was 35% for 2001 (81 cases out of 229), and 50% for 2002 (89 cases out of 179). Mr LAU Chin-shek requested the Judiciary Administration to provide information on the amount of the claims involved in both the successful and unsuccessful cases.

JA

38. Mr Andrew CHENG and Mr LAU Chin-shek said that in most cases, employees without legal aid could not afford the costs of instituting bankruptcy or winding-up petition against the employers. For cases where the value of the goods and chattels seized was insufficient to pay for the claims of the employees, the costs of instituting a petition would mean an additional loss to the employees. Mr CHENG and Mr LAU opined that new measures, including legislative means, should be implemented to improve the existing mechanism for assisting employees in insolvency cases.

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39. Mr LEE Cheuk-yan opined that to provide more efficient assistance to employees in insolvency cases in claiming arrears of wages and other statutory benefits, a one-stop service should be provided by LD in handling such claims. He said that he would propose the issue for follow-up by the Panel on Manpower. The Chairman suggested that the existing role played by the Legal Aid Department in such matters should also be reviewed.

40. PS for (EDL)(L) noted members' views and responded that the issues raised would be looked into in the context of the overall review to be conducted by the Administration and the Judiciary.

The way forward

41. Members generally shared the view that with the increasing complexity of existing law enforcing employee rights and benefits and the nature of labour disputes as well as the large number of claims, the present mode of operation of LT was inadequate in achieving the intended purpose for which LT was established 30 years ago. The situation warranted a thorough review of the existing dispute resolution system. The need for a review was reinforced by the various concerns expressed by both employees' organizations and employers' associations about the operation of LT.

Review to be conducted by the Administration and the Judiciary

42. Members requested the Administration and the Judiciary to -

- (a) consider implementing short-term measures to improve the operation of LT; and
- (b) conduct an overall review on the practice and procedure of LT and report to the Panels on the result of the review.

43. In connection with paragraph 42(b) above, the Chairman requested the Administration and the Judiciary to provide a response within one week on -

- (a) the anticipated timeframe for completing the review and reporting to the Panels; and
- (b) the scope of the review.

The Chairman also requested the Administration and the Judiciary to take into consideration the views expressed by members of the Panels and the deputations in conducting the review.

JA & Admin

(Post-meeting note - (a) JA replied on 26 June 2003 that the Chief Justice (CJ) had decided to appoint a Working Party to review the

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operation of LT and to make improvements thereto. The Working Party aimed to submit a report to CJ by the end of 2003, and inform the Panels of the outcome of the review in early 2004. The letter from JA was circulated to members vide LC Paper No. CB(2)2694/02-03(01) on 27 June 2003; and (b) a letter dated 21 August 2003 from JA in response to the issues raised in paragraphs 37 and 42(a) above was circulated to members vide LC Paper No. CB(2)3025/02-03(01) on 28 August 2003.)

Research study by the Research and Library Services Division (RLSD)

44. To facilitate further consideration of the Panels, members agreed to request RLSD of the Legislative Council Secretariat to undertake a research study on the operation of LT in Hong Kong and similar bodies in selected places. The research should feature, in the main, a comparative study of the procedures for handling labour disputes, the efficiency and effectiveness of the dispute resolving mechanism, as well as enforcement of awards and orders. Members agreed that the research should cover Hong Kong, the United Kingdom, Taiwan, Singapore and the Republic of Korea (Korea).

(Post-meeting note - RLSD proposed to replace Korea with New Zealand for inclusion in the research as information on Korea was available mostly in Korean language. Moreover, the New Zealand's Employment Relations Act 2000 provided a new dispute resolution mechanism which settled most of the disputes by way of mediation. The research was expected to be completed in October 2003. A research outline prepared by RLSD was endorsed at a joint meeting of the Panels on 1 August 2003.)

45. The meeting ended at 1:00 pm.

Council Business Division 2
Legislative Council Secretariat
4 September 2003