

**立法會**  
**Legislative Council**

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**Panel on Administration of Justice and Legal Services and  
Panel on Manpower**

**Background Brief prepared by Legislative Council Secretariat  
Labour Tribunal**

**PURPOSE**

This brief summarises past discussions of Members of the Legislative Council (LegCo) on major issues relating to the Labour Tribunal, including -

- (a) discussions held by the Public Accounts Committee (PAC) on Chapter 7 of the Report No. 34 of the Director of Audit tabled in LegCo on 29 March 2000 which examined, inter alia, the measures taken by the Judiciary to meet the statutory time limit for hearing labour disputes, and to clear the backlog of labour dispute cases in the Labour Tribunal;
- (b) discussions of the Panel on Administration of Justice and Legal Services (AJLS Panel) on the workload of the Labour Tribunal, review of the financial limit of the Minor Employment Claims Adjudication Board (MECAB), and legal representation in the Labour Tribunal; and
- (c) questions raised at Council meetings on waiting time for Labour Tribunal cases and claims for non-payment of wages handled by the Labour Tribunal.

**LABOUR TRIBUNAL**

2. The Labour Tribunal was set up under the Labour Tribunal Ordinance (Cap. 25) in 1973 to provide a quick, informal and inexpensive means to settle monetary disputes between employees and employers. A copy of the booklet on "Labour Tribunal" published by the Judiciary in February 2003 is in **Appendix I** for members' reference.

## **BACKGROUND**

3. When the Judiciary Administrator briefed the AJLS Panel on his work at the Panel meeting on 25 November 2002, a member enquired whether the financial limit of MECAB jurisdiction could be raised so that MECAB could take over more minor employment claims, thus reducing the workload of the Labour Tribunal. The Chairman requested the Judiciary Administrator to provide a paper on the measures to enhance the operation of the Labour Tribunal for consideration of the Panel. The paper (**Appendix II**) was provided by the Judiciary Administrator on 20 February 2003. The Judiciary Administrator subsequently provided supplementary information (**Appendix III**) on the paper on 24 February 2003.

4. The AJLS Panel agreed at its meeting on 24 February 2003 that a joint meeting with the Panel on Manpower should be held to discuss the operation of the Labour Tribunal and related issues. The Panel also agreed that major labour organizations would be invited to attend the meeting to give views. The joint meeting is scheduled for 6 May 2003.

## **ISSUES DISCUSSED**

### **Statutory time limit for hearing labour disputes**

5. Under section 13 of the Labour Tribunal Ordinance, the Labour Tribunal should hear a claim not earlier than 10 days nor later than 30 days from the date of filing of the claim.

6. In considering Chapter 7 of the Director of Audit's Report No. 34 (relevant extract in **Appendix IV**), PAC noted that since 1992, the Judiciary had been recording the cases received initially in an appointment register. The cases entered in the appointment register were not considered as having been formally filed in accordance with the Labour Tribunal Ordinance. When the Registrar, Labour Tribunal found available time slots within the following 30 days for hearing the cases, he would ask the claimants to complete the formality for filing of their cases in the Labour Tribunal. The use of the appointment register would ensure that all cases met the 30-day statutory time limit.

7. The Director of Audit had recommended that the Judiciary should -

- (a) set a target for the duration in which a case was kept in the appointment register before the case was formally filed; and
- (b) in the longer term, consider stopping the practice of using the appointment register as a buffer against increasing caseload.

8. The Judiciary Administrator had advised PAC that -
- (a) the appointment register provided a buffer against the increasing caseload of the Labour Tribunal. Without this mechanism, the Labour Tribunal would have difficulties in mobilising its resources in time to cope with the upsurge in labour disputes in the face of the economic downturn;
  - (b) the Labour Tribunal Ordinance was enacted in 1973. According to records, the appointment register had existed in as early as 1987. In spite of the discussion on the appointment register throughout the years, it was agreed that there was a practical need to retain the mechanism;
  - (c) in order to cope with the increase in workload, the Judiciary had introduced night sittings in three Labour Tribunal courts and Saturday sittings in one court, in addition to the present set-up of 10. As resources were limited, the use of the appointment system was a reasonable measure to cope with the demand;
  - (d) the Judiciary noted Audit's recommendation on setting a target for the duration in which a case was kept in the appointment register before the case was formally filed. The Judiciary had set a target of 30 days in respect of the duration in which a case was kept in the appointment register since the publication of the Auditor Report No. 34. Barring unforeseen circumstances, the Labour Tribunal should be able to adhere to the target waiting time of 30 days for filing and 30 days for hearing, and to reduce the backlog gradually; and
  - (e) the Judiciary had undertaken to review the use of the appointment system when the situation stabilised. It would review the waiting time for cases in the appointment register on a bi-weekly basis until it reached zero in terms of the number of days.

9. In its Report No. 34 (relevant extract in **Appendix V**) tabled in LegCo on 21 June 2000, PAC expressed dismay that the Judiciary had resorted to using the appointment register mechanism as a means to circumvent the 30-day statutory time limit for the Labour Tribunal. PAC urged the Judiciary to urgently review the appointment register mechanism.

10. The Administration's subsequent responses were reflected in PAC's Report Nos. 37 and 39 (relevant extracts in **Appendices VI and VII**) tabled in LegCo on 6 February 2002 and 19 February 2003 respectively, as follows -

- (a) in October 2001, PAC was informed that the Judiciary considered that the appointment register was still a good mechanism to ensure that claimants were properly served on a day-to-day basis. The

Judiciary did not think that this was the opportune time to dispense with it and would keep the situation under review; and

- (b) in October 2002, PAC was informed that the Judiciary did not envisage that the number of cases would drop in the near future and therefore considered it appropriate to maintain the appointment register in the meantime.

### **Workload of the Labour Tribunal**

11. Having regard to the recommendations in Report No. 34 of the Director of Audit (**Appendix IV**), PAC urged the Judiciary Administrator to take effective measures to clear the backlog of cases in the Labour Tribunal, including the introduction of night and Saturday court sittings.

12. At the Council meeting on 6 March 2002, Hon TAM Yiu-chung raised a written question on "Waiting time for Labour Tribunal cases". Mr TAM requested the Administration to advise on, inter alia, the average number of cases dealt with by each day court and night court of the Labour Tribunal, and whether any other measures would be introduced to shorten the waiting time for the Tribunal cases. An extract from the Official Record of Proceedings of the meeting is in **Appendix VIII**.

13. According to the paper and supplementary information (**Appendices II and III**) provided by the Judiciary Administrator to the AJLS Panel in February 2003 -

- (a) the caseload of the Labour Tribunal had increased in the past few years as follows -

<u>Year</u>	<u>Cases filed</u>	<u>Percentage increase/decrease</u>
1997	6,319	
1998	9,476	+50%
1999	11,594	+22%
2000	9,611	-21%
2001	10,450	+ 9%
2002	12,326	+18%

- (b) despite the increase in caseload, the average waiting time of 30 days for filing and 30 days for hearing at the Labour Tribunal (paragraph 8(d) above refers) had been maintained within targets as follows -

	<u>Waiting time (days)</u>			
	<u>Target</u>	<u>2001</u>	<u>2002</u>	<u>2003 as at 10 February 2003</u>
From appointment to filing of a case	30	14	19	9
From filing of a case to hearing	30	24	25	20

- (c) With regard to the scheme of night and Saturday court sittings, the Judiciary had introduced, on a trial basis, night sittings in three courts in April 1999. The number of day courts was increased from 10 to 12 in January 2000. In October 2001, one night court was replaced by a day court to increase the capacity of the courts to deal with trials. There were a total of 13 day courts, two night courts and one Saturday (morning) court. However, experimentation with the night courts soon revealed that they were not as effective as the day courts because given the short sitting time available in the evenings, they could normally handle cases with less complexity on facts and law, a smaller number of parties and requiring no language interpretation. With the improvement in waiting time as mentioned in paragraph 13(b) above, the Judiciary had suspended the night sittings with effect from 20 February 2003.

### **Review of financial limit of Minor Employment Claims Adjudication Board (MECAB)**

14. MECAB was established under the MECAB Ordinance (Cap. 453) in December 1994. The aim was for MECAB to take over the minor cases from the Labour Tribunal. MECAB is operated by the Labour Department. In June 1997, the financial limit of MECAB's jurisdiction was increased from \$5,000 to \$8,000 per claimant and the maximum number of claimants involved in a case was increased from five to 10.

15. In his Report No. 34 (**Appendix IV**) tabled in LegCo on 29 March 2000, the Director of Audit urged the Judiciary Administrator to actively consider raising the financial limit of MECAB jurisdiction so that MECAB could take over more minor employment claims.

16. The Judiciary Administrator advised PAC that the establishment of MECAB in 1994 was based on practical considerations. It was an administrative means to relieve the heavy workload of the Labour Tribunal. While it had proven to be an effective mechanism to deal with minor employment claims,

whether an administrative department should be charged with the responsibility for adjudicating civil cases remained an important policy issue and should be further considered.

17. PAC noted the concern of the Judiciary Administrator that adjudicators of MECAB were not legally qualified persons. Any consideration of increasing the financial limit of MECAB's jurisdiction, apart from the need to demonstrate cost-effectiveness, would also need to take into account whether it was the best way of preserving the quality of justice delivered and professionalism involved. In view of the concern expressed by the Judiciary Administrator, PAC invited the views of the Secretary for Education and Manpower (SEM) on the Government's policy in respect of the purpose and functions of MECAB, and on the way forward.

18. In his letter of 19 April 2000, SEM made the following comments -

- (a) although the Adjudication Officers of MECAB were not legally qualified, they were all veteran Senior Labour Officers who were highly experienced in handling labour disputes and conversant with the Employment Ordinance and employment practices. They had also received tailor-made training, including basic legal knowledge, before taking up the adjudication duties under the MECAB Ordinance;
- (b) in view of the proven effectiveness of MECAB in adjudicating minor employment claims, MECAB was ready to help ease the backlog of the Labour Tribunal. But it was up to the Judiciary to consider whether or not to take up this offer; and
- (c) the financial limit of the jurisdiction of MECAB was raised in June 1997 from \$5,000 per claimant to \$8,000 per claimant to offset the effect of cumulative wage increases since December 1994. If necessary, the financial limit would be reviewed in the light of changes in wage levels.

19. As indicated in PAC Report No. 37 (**Appendix VI**) tabled in LegCo on 6 February 2002, the Commissioner for Labour advised PAC that the Administration had reviewed the movement of average wage rates since 1997, and had no plan to revise the financial limit of MECAB. However, the situation would be kept under review.

20. At the meeting of the AJLS Panel on 25 November 2002, a member had raised the question of whether the financial limit of MECAB could be increased to help ease the workload of the Labour Tribunal. The Judiciary Administrator had reiterated that it was not desirable to increase the financial limit of MECAB which was an administrative body established for the purpose of resolving minor employment claims.

### **Legal representation in Labour Tribunal**

21. At its meeting on 21 December 1999, the AJLS Panel discussed whether the Presiding Officer of the Labour Tribunal should be given discretion to allow legal representation for both parties in complex cases. The Administration considered it undesirable to introduce legal representation in the Labour Tribunal for the following major reasons -

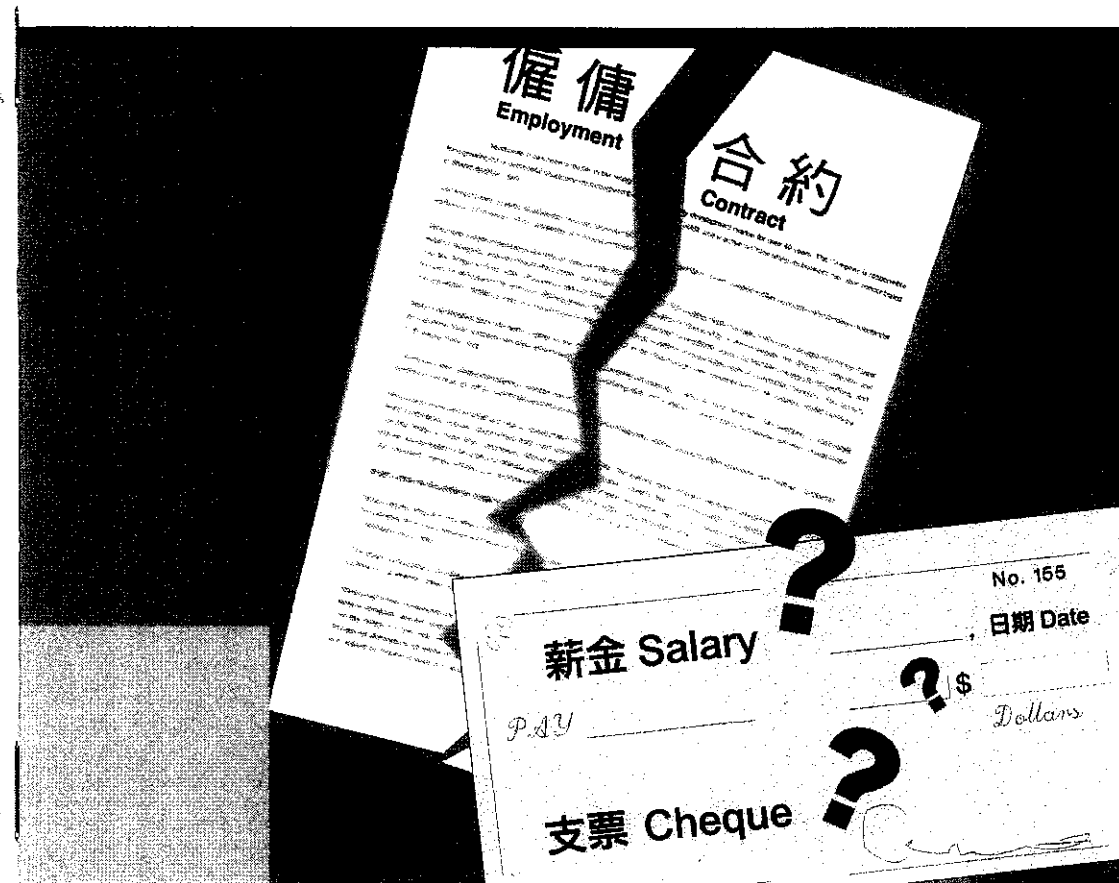
- (a) should the Presiding Officer consider that the case before the Tribunal involved some complications or the employee would be at a disadvantage in not being able to deal with the matter himself, the Presiding Officer could decline jurisdiction over the case and transfer the case to a higher court so that the employee could either instruct his own lawyer or apply for legal aid; and
- (b) although not explicitly set out in the Labour Tribunal Ordinance, all Presiding Officers of the Labour Tribunal were legally qualified and were able to assist self-represented litigants during the course of a hearing.

### **Cases of default on payment of wages**

22. At the Council meeting on 17 January 2001, Hon Andrew CHENG raised a written question on "Cases of default on payment of wages". Mr CHENG requested the Administration to provide, inter alia, information on the number of claims against non-payment of wages handled by the Labour Department, and the number of orders made by the District Court for the purpose of enforcing the awards or orders made by the Labour Tribunal in relation to non-payment of wages. An extract from the Official Record of Proceedings of the meeting is in **Appendix IX**.

# 勞資審裁處

## LABOUR TRIBUNAL



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及具有權威性的說明。

This publication is for general reference only and  
should not be treated as a complete and authoritative  
statement of law or court practice.



# LABOUR TRIBUNAL

## What work does the Labour Tribunal carry out?

The Labour Tribunal offers a quick, informal and inexpensive way of settling monetary disputes between employees and employers. There is no upper limit on the amount of claim.

The Tribunal hears cases involving breaches of the terms of a contract of employment or apprenticeship performed in Hong Kong as well as contracts of employment performed outside Hong Kong.

## What types of claim does the Tribunal hear?

As an employee, you would be likely to claim in respect of:

- wages due for work done
- wages in lieu of notice of termination of a contract of employment by an employer without giving the required notice
- wages deducted contrary to the Employment Ordinance
- pay for statutory holidays, annual leave, rest days, sickness allowance, maternity leave, or severance
- end of year payment, double pay or annual bonus
- commission
- long service payment

- terminal payments
- compensation for unlawful dismissal
- unpaid wages of up to 2 months against the principal contractor and superior sub-contractors in the building and construction industry
- orders for reinstatement or re-engagement
- other benefits conferred by law or employment contract

As an employer, you would be likely to claim in respect of:

- wages in lieu of notice on resignation or termination of contract of employment
- wages or leave advanced to the employee

The Tribunal only hears cases where the amount of claim exceeds \$8,000 for at least one of the claimants in a claim or where the number of claimants in the claim exceeds 10 persons. Claims lodged by not more than 10 claimants for a sum of money not exceeding \$8,000 per claimant and the cause of action arose within one year before the date of filing of claim are normally dealt with by the Minor Employment Claims Adjudication Board, located at 10/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon (Tel: 2927 8000).

## Can a claim be settled without bringing it to the Tribunal?

It is always advisable to attempt to settle through conciliation. The Labour Relations Division of the Labour Department stands ready to help both parties settle quickly and amicably. The hotline number for advice on conciliation services is 2717 1771.

If conciliation fails, you can consider bringing your claim to the Tribunal. If you are not sure whether you can lodge your claim at the Tribunal, please ask for guidance from the Tribunal's hotline at 2625 0020 or Registry at 2625 0205.

## What do I do if I decide to file a claim?

The procedure is quite simple. First, call the 24-hour Telephone Appointment Booking System of the Labour Tribunal at 2625 0056 to make an appointment for filing of claim.

On the filing date, you should report your attendance at the Registry with your Hong Kong Identity Card and the referral number of the Labour Department. At the Registry we would hand you, as Claimant, an Appointment Parties' List for verification of your name, Hong Kong Identity Card number, address and telephone number.

You should also verify the name and address of the person, firm or company you are claiming against – the Defendant. These particulars should be completely accurate so that a copy of your claim can be effectively served on the Defendant. A P.O. Box number will not be considered as a valid address.

- Where the Defendant is a limited company, you will need to provide the address of its registered office. You can check this at the Companies Registry, 13/F, Queensway Government Offices, 66 Queensway, Hong Kong (Tel: 2234 9933).
- Where the Defendant is a sole proprietorship or a partnership business, you will need to write down its principal place of business and/or the residential address of the proprietor or partners. You can check this information at the Business Registration Office of the Inland Revenue Department, 4/F, Revenue Tower, 5, Gloucester Road, Hong Kong (Tel: 187 8088).

Next, a Tribunal Officer will interview you and your witnesses to obtain statements and other relevant information. Basing on the information you provide, we would generate:

- a Title to Claim (Form 1), bearing the names and addresses of both Claimant and Defendant, and
- a Form of Claim (Form 2), showing the details of your claim, including the claim items, the amount claimed, and how you have calculated the amount.

You yourself will sign on Form 2 if you are acting as an individual. The sole-proprietor of a firm, or a partner of a partnership business, or a director, secretary or other authorised officer of an incorporated company bearing an authorization letter will sign on the form if the claim is lodged by an employer against an employee.

You can complete all the necessary forms in Chinese or English. Sample completed forms are on display at the notice boards of the Tribunal.

## How much does it cost to file a claim?

<b>Claim Amount</b>	<b>Filing Fees</b>
\$2,000 or less	\$20
\$2,001 - \$5,000	\$30
\$5,001 - \$10,000	\$40
Over \$10,000	\$50

A fee of \$10 per defendant's address is charged for serving the required documents on the Defendant.

If your claim succeeds, you can apply for costs incurred in putting your claim forward to be added to the award. If your claim does not succeed, you may have to pay costs to the Defendant.

The Tribunal may reduce, remit or defer payment of any fees specified in the Schedule under the Labour Tribunal (Fees) Rules if good and valid reasons for doing so are produced in writing to the Registrar, Labour Tribunal.

## What happens after I file a claim?

The Tribunal Registry will give you a Form 3 - Notice of Place and Day Fixed for Hearing. The hearing date will be set between 10 and 30 days from the date on which you file your claim. The Tribunal Registry will also arrange for copies of Forms 1, 2 and 3 to be served on each defendant.

The Tribunal Officer will investigate the case, and will ask the Defendant to attend an interview and to prepare defence and witness statements. After gathering documentary evidence and facts from both parties, he will try to assist both parties to reach an amicable settlement where possible. If conciliation fails, the Tribunal Officer will prepare a Summary of Facts stating the issues resolved and the issues in dispute for submission to the Presiding Officer before the hearing date.

## What happens if the Tribunal cannot serve my claim on the Defendant?

If your claim cannot be served on the Defendant, you will be asked to obtain the Defendant's correct address and, if necessary, verify it. If your claim still cannot be served, the Tribunal may order other means of serving the claim.

## What happens after my claim has been served?

The Defendant will either:

- agree to pay in full;
- agree to pay but ask for time to do so by instalments;
- dispute the claim in part or in whole, with or without filing a counterclaim;  
or
- ignore the claim.

### **What happens if the Defendant agrees to pay the claim in full?**

After informing the Tribunal Officer of his / her intention to pay the claim in full, the Defendant will have to pay the amount of the claim as soon as possible before the hearing date.

The Tribunal will issue an award to both parties. The Tribunal Accounts Office will inform you, as Claimant, to collect the money when it is ready. In this case, there will be no hearing.

### **What happens if the Defendant admits the claim, but cannot pay immediately?**

The Tribunal Officer will inform you of the Defendant's proposal for payment for your consideration. If both parties agree to a specific payment date or payment by instalments, the Tribunal Officer will prepare a settlement form for both parties to sign. The Tribunal will issue an award after the settlement is approved by the Presiding Officer. No hearing will be required.

If, however, both parties cannot agree on the mode or date of payment, they will have to attend a hearing. The Defendant will have to apply for time to pay or apply to pay by instalments. The Presiding Officer will determine a fair method for the Defendant to pay.

### **What happens if the Defendant disputes the claim in part or in whole?**

The Tribunal Officer will investigate the claim as well as any counterclaim put forward by the Defendant. Both Claimant and Defendant will be requested to file statements and relevant documents in support of their allegations.

### **What happens if the Defendant ignores the claim?**

The Presiding Officer may enter judgment in the Defendant's absence if he is satisfied that the claim has been served and that the claims put forward by the claimant are genuine.

### **How long will it take for the Tribunal to hear a claim?**

The aim is to dispose of cases as quickly as possible. As Claimant you may seek the other party's written consent and apply for an even earlier hearing date if you can give good reasons for doing so.

### **Hearings**

The strict rules of evidence that apply in most other courts are not rigidly adhered to in Tribunal hearings. Neither party may be legally represented. The Tribunal may, however, allow an office bearer of a registered trade union or an association of employers who has been authorised in writing by a Claimant or Defendant to represent the party.

### **What will happen at the first hearing?**

Both parties must attend the first hearing, which is conducted in a courtroom. If the Claimant is absent, the Tribunal may strike out the claim. If the Defendant does not turn up, judgment may be entered in his absence if the claim has been served and the Claimant can prove the case.

The Presiding Officer will explain the issues and the relevant laws in an attempt to help the parties settle amicably. If they agree to do so, the Presiding Officer may ask the Tribunal Officer to record the terms of settlement. He may instead make an order in court in accordance with such terms. Any terms of settlement reached before the Tribunal Officer will be signed by both parties and will be submitted to the Presiding Officer for approval.

If the parties cannot settle, the Presiding Officer will tell them if they need to submit further documentary evidence. He may order this evidence to be submitted to the Tribunal Officer within a specified period.

If the case is ready, and the issues are simple, the Presiding Officer may conduct the trial immediately at or after the first hearing and deliver judgment the same day.

### **What will happen at any further hearings?**

Both parties must attend any further hearings. If the Claimant is absent, the Tribunal may strike out the claim. If the Defendant does not turn up, but has been served with the claim, judgment may be entered in his absence if the Claimant can prove the case.

The Presiding Officer will

- hear each party's case;
- allow the Claimant and the Defendant to question each other and their witnesses;
- order the parties to provide further evidence or to call further witnesses and adjourn the hearing to a later date;
- deliver his judgment at the end of the hearing or fix a date to deliver his judgment.

## **After a hearing**

### **What should I do if I fail to turn up for a hearing and my claim is struck out?**

As Claimant, you can apply within 7 days after the hearing or such further period as the Tribunal may allow for the striking-out order to be set aside and the case restored. This will be allowed only for valid reasons and may be subject to conditions set by the Tribunal.

A claimant applying for restoration will need to complete an "Application for Restoration" form, which is available at the Tribunal Registry, and to pay a prescribed fee.

### **Can a Defendant object to the Tribunal's judgment if he or she is absent on the hearing?**

Yes. The Defendant can apply for the award to be set aside within 7 days after the hearing or such further period as the Tribunal may allow and on any conditions the Tribunal thinks fit.

A defendant applying to set aside an award or order will need to complete an "Application to Set Aside an Award/Order" form, which is available at the Tribunal Registry, and to pay a prescribed fee.

### **Can a judgment be reviewed?**

Yes. Either party can apply for a review of the judgment within 7 days from the date of the award.

The Presiding Officer may also review the judgment on his own motion within 14 days from the date of the award.

The claim may be re-opened, or re-heard in whole or in part, and the previous award or order may be confirmed, varied or reversed.

A party applying for review will need to complete an “Application for Review” form, which is available at the Tribunal Registry, and to pay a prescribed fee.

### **Can both Claimant and Defendant appeal?**

Yes. But an appeal can be lodged only on the grounds that the award or order is erroneous in point of law or outside the jurisdiction of the Tribunal.

Either party may apply to the Court of First Instance of the High Court for leave, i.e. permission, to appeal within 7 days after the date on which the written award or order was served on him, or within such extended time as may be allowed by the Registrar of the High Court on good cause.

A refusal by the Court of First Instance to grant leave to appeal is final. If leave is granted, the Court of First Instance will hear and determine the appeal.

### **Can a decision of the Court of First Instance be appealed?**

Yes. Both Claimant and Defendant may apply to the Court of Appeal for leave to appeal within 7 days after the date of the decision of the Court of First Instance. The Court of Appeal may grant leave to appeal if it considers that a question of law of general public importance is involved.

### **How do I appeal against a decision of the Tribunal or the Court of First Instance?**

Your application for leave to appeal should be lodged with the Registrar of the High Court. At your request, the staff of the Clerk of Court's Office will help you prepare the form of appeal.

#### **Clerk of Court's Office**

Address: G/F, High Court Building, 38, Queensway, Hong Kong

Telephone: 2825 4228

Facsimile: 2530 3512

Unless you wish to conduct the appeal in person, you will need to instruct both a solicitor and a barrister in the High Court. An incorporated company must be legally represented.

### **Payment of Award**

#### **How do I get back the money I am awarded?**

The Tribunal may specify how the judgment debtor is to make payment to the judgment creditor. If the judgment debtor fails to pay, the judgment creditor may apply to the Tribunal for a Certificate of Award. This may be registered in the District Court within 12 months from the date of the award. The judgment creditor may then apply to the District Court for the court bailiff to enforce the judgment. Further information about these services is contained in a booklet available at the Information Counter or General Registry of all courts.

If the judgment cannot be enforced because the judgment debtor is penniless or has disappeared, you can consider applying for ex-gratia payment from the Protection of Wages on Insolvency Fund. You may call the Labour Department at 2717 1771 for details concerning such application.

### **As a judgment creditor, can I enforce the judgment if the judgment debtor has lodged an application for leave to appeal?**

The fact that a judgment debtor has lodged an application for leave to appeal does not mean that enforcement of an award or order must be withheld. However, an order withholding enforcement of judgment may be made by the Tribunal, Court of First Instance or Court of Appeal on such terms as the court thinks fit.

### **Performance Pledge**

- The Tribunal will list a case for hearing not later than 30 days from the date of filing of claim.
- Wherever possible, the Judiciary will reply at once to correspondence from members of the public. In any case, we will give you an interim reply within 10 days and a full response within 30 days of receiving a letter.
- We welcome all comments and suggestions for improving our services. Please send them to the Judiciary Administrator at the High Court, 38 Queensway, Hong Kong.

### **How to Contact Us?**

Address: 19/F & 20/F, Pioneer Centre, 750, Nathan Road, Kowloon  
Telephone: 2625 0020  
Facsimile: 2513 6797 / 2625 0556

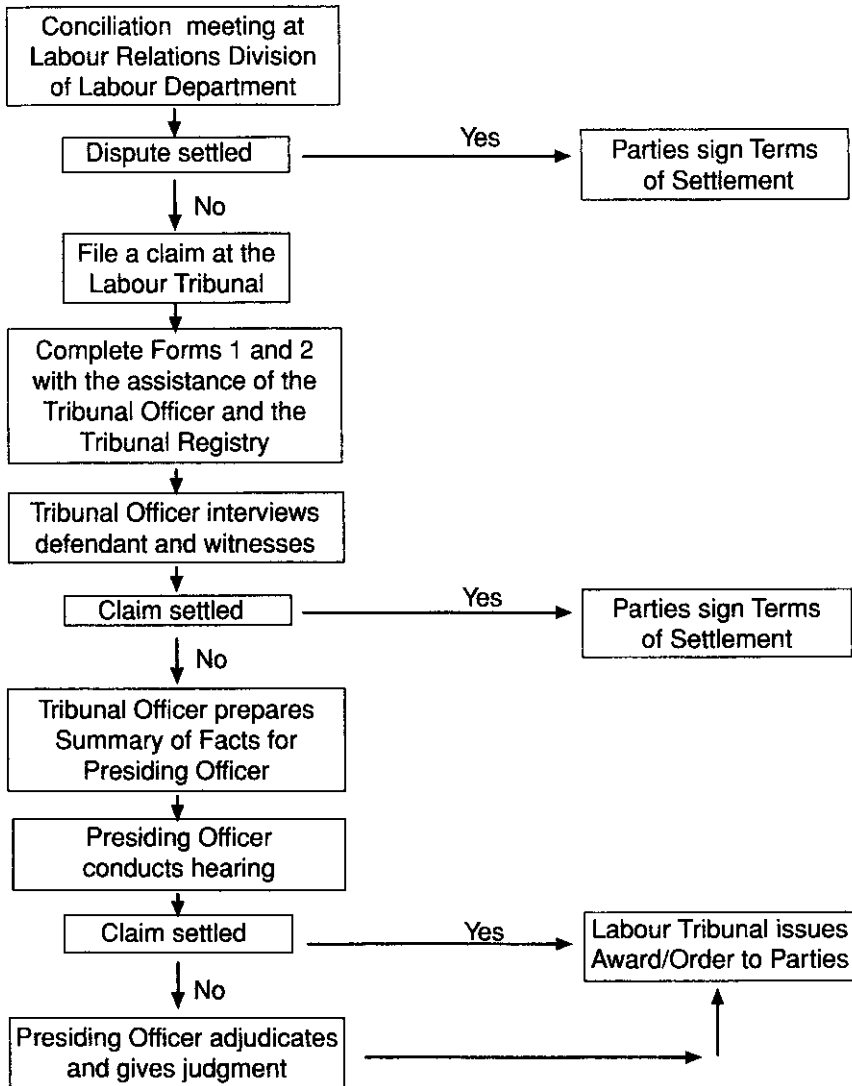
### **Business Hours**

Monday to Friday	9:00 a.m. – 1:00 p.m. 2:00 p.m. – 5:00 p.m.
Saturday	9:00 a.m. – 12:00 noon

- The Tribunal Court will adjourn and the Registry and Accounts Office will close when tropical cyclone signal No. 8 or a black rainstorm warning signal is issued.
- The Court will resume and the Registry and Accounts Office will open as usual if such signal is cancelled at or before 6:00 a.m.
- The Court will resume and the Registry and Accounts Office will open at 2:30 p.m. if such signal is cancelled between 6:00 a.m. and 10:00 a.m. or at 10:00 a.m.
- The Court will remain adjourned and the Registry and Accounts Office will be closed for the whole day if such signal is cancelled after 10:00 a.m.
- If the hearing of your case is affected as a result of a tropical cyclone or rainstorm signal, please listen to radio and television announcements about re-opening times, or call the Tribunal Registry at 2625 0020 for enquiries.

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February 2003  
(4th Edition)

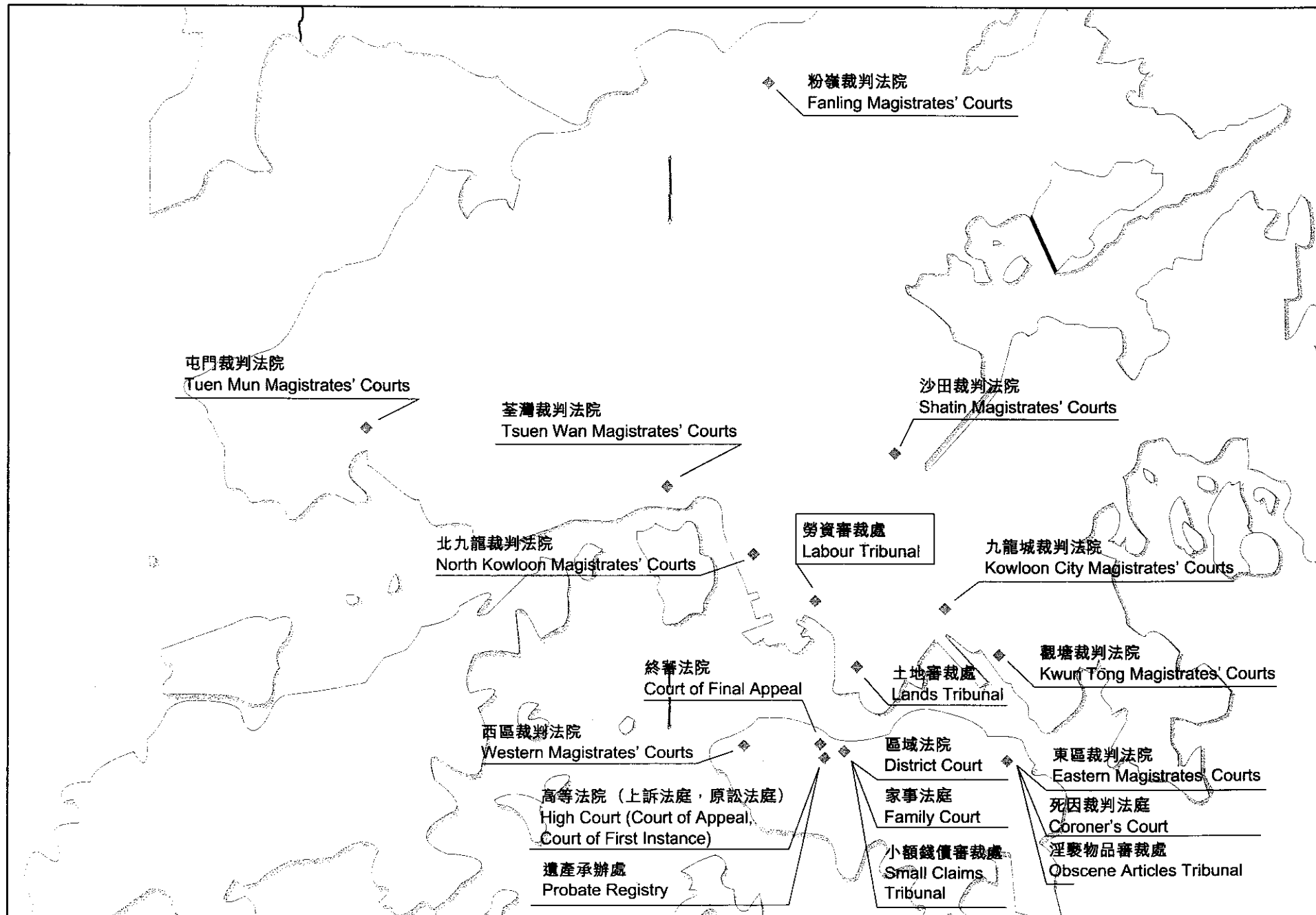
Procedures for Settling Monetary Disputes between  
Employees and Employers





# 香港各級法院及遺產承辦處位置圖

## Location Map of All Levels of Courts and Probate Registry in Hong Kong



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

**Labour Tribunal**

**Introduction**

At the Panel meeting on 25 November 2002, Members enquired about the workload situation of the Labour Tribunal. In this regard the Chairman requested the Judiciary Administration to provide a paper on the current operation of the Labour Tribunal for the Panel's consideration.

2. This paper sets out the caseloads of the Labour Tribunal and measures taken to enhance its operation.

**Caseloads**

3. The caseloads of the Labour Tribunal are closely related to the economic situation of Hong Kong. With the sharp economic downturn in the past few years, they have risen substantially, as follows :

<b>Year</b>	<b>Cases filed</b>	<b>Percentage increase/decrease</b>
1997	6 319	
1998	9 476	+50%
1999	11 594	+22%
2000	9 611	-21%
2001	10 450	+9%
2002	12 326	+18%

4. Apart from the increases in caseloads, the issues before the courts have also become more complex. In October 1999, section 9 of the Labour Tribunal Ordinance (Cap. 25) was amended, permitting filing of claims with causes of action arisen within six years instead of one year. This legislative amendment has resulted in filing of back claims. The implementation of the Mandatory Provident Fund in December 2000 has also compounded labour dispute claims.

**Improvement Measures**

**(a) Setting up additional courts**

5. When it was evident that the increases in caseload from 1998 were going to last, the Judiciary introduced, on a trial basis, night sittings in three courts in April 1999 with appointment of temporary Presiding Officers. Furthermore, two additional day courts were set up in January 2000, thus

increasing the number of day courts from 10 to 12. Such measures helped to reduce the backlog of cases considerably.

6. In October 2001, the Judiciary set up another day court to increase the capacity of the courts to deal with trials. The Labour Tribunal has 13 day courts in operation at present.

7. Experimentation with the night courts soon revealed that they were not as effective as the day courts because given the short sitting time available in the evenings, they could normally handle cases with less complexity on facts and law, a smaller number of parties and requiring no language interpretation. With the improvements achieved in waiting times reported below, their operation has been gradually wound down and taken over by day courts.

### **(b) Flexible deployment of judicial resources**

8. There are currently 5 courts which principally deal with first hearings (callover hearings). The Presiding Officers will explain the issues and relevant laws to both parties and advise them whether further documentary evidence will need to be submitted. The parties may be ordered to submit further evidence and attend court again for mention, at which the Presiding Officers will examine whether the cases are ready for trial.

9. Depending on the numbers of incoming claims and those ready for trial, the number of callover and trial courts can be shifted internally. For example, in October 2001, one trial court was converted into a callover court, making a total of 5 callover courts, in order to deal with the upsurge in claims filed.

### **(c) Enhancing the number and quality of support staff**

10. Tribunal Officers assist the parties in preparing their cases for trial. They help claimants file their claims, and interview both claimants and defendants, including witnesses, for the purpose of getting documentary evidence. To cope with the influx of claims, the number of Tribunal Officers has been increased from 29 in 1999 to 38 at present.

11. To enhance their knowledge and skills in working with the contesting parties in a neutral manner and helping them to arrive at an amicable settlement where appropriate, Tribunal Officers are provided with training courses on mediation skills. Experience sharing sessions are held regularly for benchmarking best practices in case handling.

12. A forum has also been set up to enable Tribunal Officers and registry staff to meet with Presiding Officers regularly, with a view to identifying opportunities to further improve the efficiency of the Tribunal and streamlining procedures.

### **Waiting Times**

13. With the implementation of the above measures, the average waiting times at the Labour Tribunal have been maintained well within targets as follows :

<b>Waiting Time (days)</b>	<b>Target</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003 (as at 10.2.03)</b>
From appointment to filing of a case	30	27	11	14	19	9
From filing of a case to callover hearing	30	25	21	24	25	20

Judiciary Administration  
February 2003

香港司法機構  
司法機構政務長辦公室



**By Fax** Appendix III  
LC Paper No. CB(2)1274/02-03(01)  
**JUDICIARY ADMINISTRATOR'S OFFICE**  
JUDICIARY  
HONG KONG

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Our Ref. 本署檔號：SC(CR) 25/2/1 Pt 8

21 February 2003


Mrs Percy Ma  
Clerk to LegCo AJLS Panel  
Legislative Council Building  
8 Jackson Road  
Central, Hong Kong  
(Fax : 2509 9055)

Dear Mrs Ma,

**Panel on Administration of Justice and Legal Services  
Labour Tribunal**

Further to my letter of 17 February 2003, I would like to supplement paragraph 7 of the paper on the Labour Tribunal with the information that we have suspended the night sittings from 20 February 2003.

Yours sincerely,

  
(Augustine L.S. Cheng)  
for Judiciary Administrator

Encl.

c.c. Director of Administration (Attn. Mr. James Chan) – Fax 2501 5779  
CM – Fax 2768 4650  
PPO – Fax 2513 6797  
Registrar, Labour Tribunal – Fax 2625 3136  
PIO(J) – Fax 2537 2324

**Extract from Chapter 7 of  
Report No. 34 of the Director of Audit (February 2000)**

**PART 3: THE LABOUR TRIBUNAL**

3.1 This PART examines the measures taken by the Judiciary to meet the statutory time limit for hearing labour disputes. Audit notes that the Judiciary has been taking steps to clear the backlog of labour dispute cases. However, more efforts are needed to meet the increasing demand for the services of the Labour Tribunal.

**Statutory time limit for the Labour Tribunal**

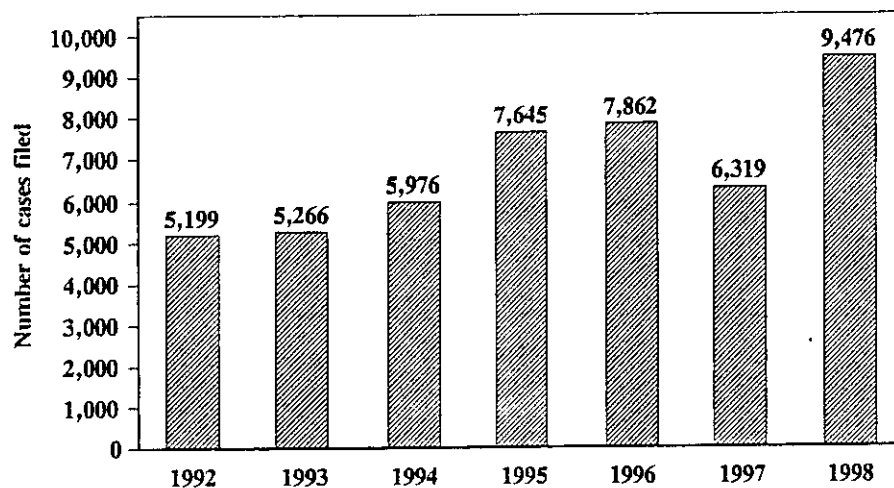
3.2 The Labour Tribunal was established in 1973 under the Labour Tribunal Ordinance (Cap. 25) to provide a quick, simple and informal method of settling some of the more common types of dispute which arise between employers and individual employees. It conducts hearings in a relatively informal manner without legal representation. **There is a statutory requirement that the Labour Tribunal has to hear a claim within 30 days from the date of filing the case unless the parties concerned agree otherwise.** This 30-day time limit has been adopted by the Judiciary as the waiting time target for the Labour Tribunal.

**Increase in workload of the Labour Tribunal**

3.3 With the growing public legal awareness and the expansion of statutory protection effected through legislation, the number of labour disputes has increased considerably. The caseload of the Labour Tribunal has increased by ten-fold since its inception (from 908 cases in 1973 to 9,476 cases in 1998). According to the performance statistics published in the Controlling Officer's Reports of the Judiciary, despite the large increase in workload, the average waiting time of the Labour Tribunal in recent years was well within the statutory time limit. Figure 1 shows the number of cases filed from 1992 to 1998. Figure 2 shows the average waiting time from the date of filing a case to the date of first hearing in the Labour Tribunal.

Figure 1

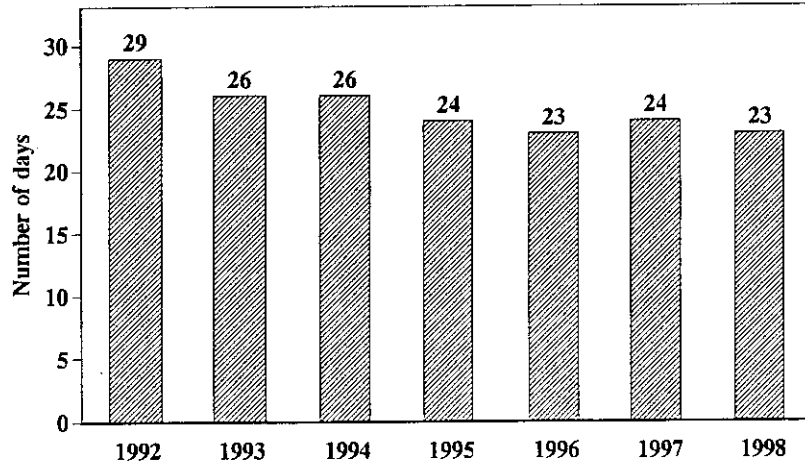
**Number of cases filed in  
the Labour Tribunal from 1992 to 1998**



*Source: Controlling Officer's Reports of the Annual Estimates*

Figure 2

Labour Tribunal's average waiting time from the date of filing a case to the date of first hearing from 1992 to 1998



Source: *Controlling Officer's Reports of the Annual Estimates*

Note: *The statutory time limit from the date of filing a case to the date of first hearing is 30 days.*

### **The use of an appointment register as a buffer against increasing caseload in the Labour Tribunal**

3.4 The Labour Tribunal Ordinance provides that a proceeding in the Tribunal shall be commenced by filing with the Tribunal Registry a claim which shall be in writing in the prescribed form and signed by the claimant. A claimant can make an appointment with the Tribunal Registry staff for registration of his claim by telephone. On the date of appointment, the claimant goes to the Tribunal Registry to file his claim. After filing the claim, the claimant will normally be interviewed on the same day by a Tribunal Officer who is responsible for making enquiries into the claim. The Presiding Officer will then hear the claim in the Labour Tribunal within 30 days from the date of filing.

3.5 In practice, in order to ensure that all the incoming cases meet the 30-day statutory time limit, since 1992 the Judiciary has been recording the cases received initially in an appointment register. The cases entered in the appointment register are not considered as having been formally filed in accordance with the Labour Tribunal Ordinance. The Registrar, Labour Tribunal uses the appointment register to allocate pending cases and to keep track of the claimants. When he finds available time slots within the following 30 days for hearing the cases, he will ask them to complete the formality of filing their cases in the Labour Tribunal (by completing and signing the prescribed form). In this way, the appointment register serves as a buffer against the increasing caseload of the Labour Tribunal. Therefore, despite the substantial increase in caseload, the Judiciary has been able to ensure that all cases filed with the Labour Tribunal are heard within the statutory time limit of 30 days.

3.6 In a paper submitted to the Establishment Subcommittee of LegCo on 15 June 1995, Members noted that the average waiting time from the date of appointment to the date of formal filing of claims had increased from 87 days in 1992 to 200 days in 1994. **Members also noted that, with the increase in volume and complexity of judicial work in the Labour Tribunal in recent years, it had become evident that the Tribunal was unable to provide the simple and quick justice that it should provide.** Thereupon, the Judiciary decided to take steps to clear the backlog of cases in the Labour Tribunal with a view to dispensing with the appointment register.

### **Recent measures to clear the backlog of cases in the Labour Tribunal**

#### **Establishment of the Minor Employment Claims Adjudication Board**

3.7 In December 1994, the Minor Employment Claims Adjudication Board (MECAB) was established under the MECAB Ordinance (Cap. 453). The aim was for the MECAB to take over the minor cases from the Labour Tribunal. The MECAB is operated by the Labour Department. Originally, the MECAB only dealt with disputes between employers and employees over wage claims where the amount claimed did not exceed \$5,000 per claimant and the number of claimants involved in a case did not exceed five. In June 1997, the financial limit of the MECAB's jurisdiction was increased to \$8,000 per claimant and the maximum number of claimants involved in a case was increased to ten.

#### **Setting up additional courts in the Labour Tribunal**

3.8 To cope with the ten-fold increase in caseload of the Labour Tribunal from its inception (see paragraph 3.3 above), the Labour Tribunal has grown from a single court sitting in 1973 to the present set-up of ten courts. In a paper submitted to the Establishment Subcommittee of LegCo on 15 June 1995, Members noted that after setting up the tenth court, the Labour Tribunal should be able to cope with the new cases without resorting to the appointment register mechanism. **The Judiciary expected that the Labour Tribunal should thereafter be able to dispense with the appointment register and to formally adopt the practice of filing a case on the date of receipt.**

#### **Introduction of night court and Saturday court sittings**

3.9 However, from late 1997, the financial turmoil has brought about a soaring number of labour dispute cases. The number of cases filed with the Labour Tribunal increased by 50% from 6,319 in 1997 to 9,476 in 1998. In the first nine months of 1999, there were already 8,780 cases filed with the Labour Tribunal. As at September 1999, there were still 901 cases on the appointment register pending formal filing in the Labour Tribunal. From January to September 1999, on average a new case had to be kept in the appointment register for 38 days before it was formally filed in the Labour Tribunal. Currently, the Labour Tribunal still has to use the appointment register mechanism.



3.10 Back in April 1999, in order to cope with the increasing backlog of cases in the Labour Tribunal, the Judiciary had commenced night sittings, on a trial basis, in three courts which operated from 6 p.m. to 9:30 p.m. from Monday to Friday. At night, the courts are presided by temporary Presiding Officers who are legal practitioners in private practice. The cost of operating the three courts at night was about \$5.4 million a year. In June 1999, in order to expedite the clearing of the backlog, the Judiciary also introduced Saturday sittings (Note 4) in three courts of the Labour Tribunal.

3.11 In July 1999, the Judiciary reviewed the trial scheme of night sittings in the Labour Tribunal. The review found that, from April to June 1999, in the night sittings the three courts handled a total of 320 cases (i.e. an average of 107 cases per month). The Judiciary considered that the night courts performed well compared with the day courts. Besides, the response of the community towards the trial scheme of night court sittings had been both positive and encouraging. In December 1999, after reviewing the need for and the mode of operation of the night court system, the Judiciary decided that night courts and Saturday courts should continue.

#### **Audit observations on the statutory time limit for the Labour Tribunal**

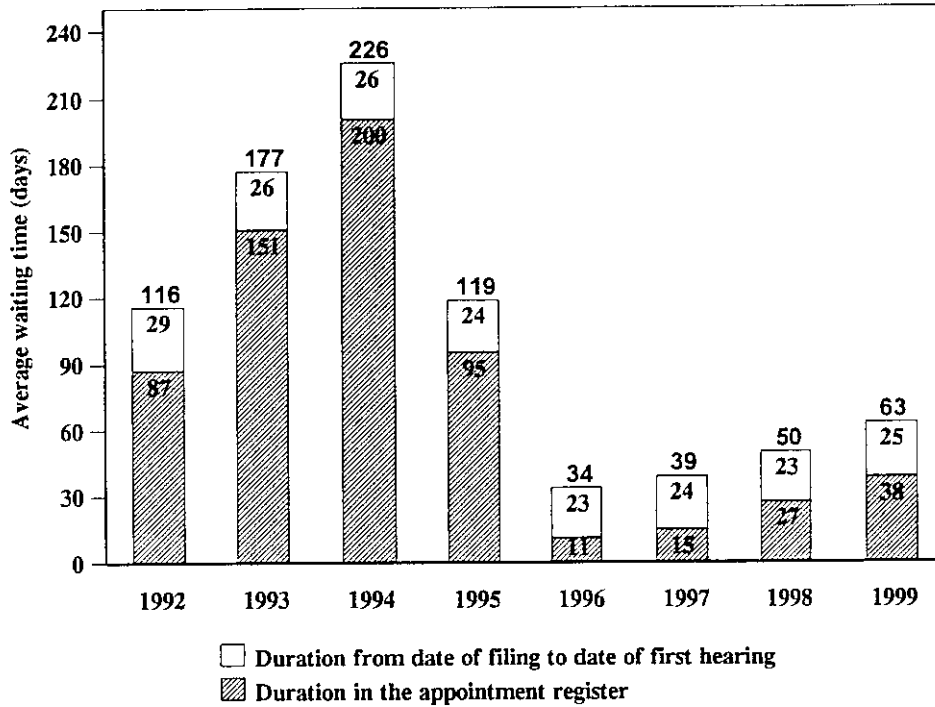
3.12 The Labour Tribunal aims to provide a quick, simple and informal means of resolving labour disputes. The Labour Tribunal Ordinance provides that a claim shall be heard within 30 days from the date of filing the case. However, in practice, since 1992 the Judiciary has had to resort to using the appointment register mechanism which requires a claimant to file a case with the Labour Tribunal only after a time slot is available to hear the case. Audit has analysed the average waiting time for hearing a case from 1992 to 1999, broken down into the duration it is kept in the appointment register and the duration from the date of filing to the date of first hearing (see Figure 3 below).

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Note 4: *Before the introduction of Saturday court sittings in June 1999, there was a Presiding Officer on duty in the Labour Tribunal each Saturday but there were no court hearings.*

Figure 3

Average waiting time for hearing a case in the Labour Tribunal from 1992 to 1999



Source: Judiciary's records

Note: The figures for 1999 are based on the first nine months of 1999.

3.13 It can be seen in Figure 3 in paragraph 3.12 above that, taking into account the duration a case is kept in the appointment register, in recent years, the total waiting time for hearing a claim in the Labour Tribunal has been much longer than the statutory 30-day limit. For instance, in 1994, the average waiting time of 226 days was 7.5 times that of the statutory 30-day limit. From January to September 1999, the average waiting time of 63 days was double that of the time limit. To date, the Labour Tribunal is still relying on the appointment register mechanism. Audit notes that the appointment register mechanism was devised as an expedient to deal with the problem of long waiting time arising from the increasing workload of the Labour Tribunal. In this regard, noting that the practice is unsatisfactory, the Judiciary has recently been taking steps to clear the backlog of cases with a view to dispensing with the appointment register, but with limited success. There is an urgent need for this problem to be resolved.

3.14 In the Controlling Officer's Report, the Judiciary has published the waiting time from the date of filing a case to the date of first hearing as the only performance indicator for the Labour Tribunal. The waiting times have always been well within the 30-day target (see Figure 2 in paragraph 3.3 above). Audit considers that in order to provide a more meaningful performance indicator, relevant explanatory notes showing the time which a claimant has actually spent in waiting for a hearing (including the duration in which the case has remained in the appointment register) should be included.

3.15 Audit notes that the MECAB was established to alleviate the workload of the Labour Tribunal (see paragraph 3.7 above). In view of the existing heavy workload of the Labour Tribunal and following recent initiatives of increasing the financial limits of the civil jurisdiction (see paragraphs 2.22 and 2.23 above), Audit considers that there is a need to review the financial limit of the MECAB's jurisdiction so that the pressure of increasing workload of the Labour Tribunal can be eased by transferring some of the minor employment claims currently being dealt with by it to the MECAB for adjudication.

#### **Audit recommendations on the statutory time limit for the Labour Tribunal**

3.16 Audit has *recommended* that the Judiciary Administrator should, in respect of the Labour Tribunal:

- (a) set a target for the duration in which a case is kept in the appointment register before the case is formally filed;
- (b) provide useful management information in the Controlling Officer's Report, including additional performance data on the time taken between the reporting of a case to its filing, in order to enhance the transparency and public accountability of the Judiciary;
- (c) in the longer term, when the effect of the financial turmoil has waned, consider stopping the practice of using the appointment register as a buffer against increasing caseload;
- (d) closely monitor the implementation of the scheme of night and Saturday court sittings; and
- (e) in the future review of the scheme, critically assess the cost-effectiveness of the night court system for clearing the backlog of cases.

3.17 Audit has also *recommended* that the Judiciary Administrator should, in conjunction with the Labour Department, consider reviewing whether the financial limit of the MECAB's jurisdiction should be increased so that the MECAB can take over more cases of wage claims of small amounts.

### **Response from the Administration**

3.18 The Judiciary Administrator has said that:

#### *Regarding paragraph 3.16(a) above*

- (a) he agrees that a target should be set for the duration in which a case is kept in the appointment register;
- (b) he accepts that too long a period for keeping a case in the appointment register defeats the Labour Tribunal's aim to administer speedy justice;

#### *Regarding paragraph 3.16(b) above*

- (c) with the agreement of the Principal Presiding Officer, he will set a performance pledge of 30 days in 2000-01 in the Controlling Officer's Report in respect of the duration in which a case is kept in the appointment register;
- (d) as a reference, a claimant may have to wait for six months to get a hearing before the Employment Tribunals in the U.K. Without appearing to be complacent, the Judiciary is of the view that the Labour Tribunal has been and still is providing a simple and informal means of resolving labour disputes;

#### *Regarding paragraph 3.16(c) above*

- (e) since the Labour Tribunal does not allow legal representation, its Tribunal Officers have a duty to assist claimants in the preparation work for filing their claims in order to reduce the number of visits that they may have to make before hearing. An appointment system will ensure that adequate attention is given to the claimants when they turn up at the scheduled time. The system can also even out the caseload to ensure manpower resources are optimally deployed. It is particularly necessary in group cases where hundreds of claimants are involved;

- (f) the earlier attempt to dispense with the appointment register (see paragraph 3.8 above) was made on the assumption that with additional resources requested, the Labour Tribunal should be able to clear the backlog of cases, hence there was no need to regulate case flow. The assumption, however, was put to test in the last two years when there was an upsurge in labour disputes following the economic downturn. The appointment system has proven to be necessary to provide a buffer (against breaching the statutory 30-day limit) to allow resources to be mobilised in time to cope with sudden increase in workload;
- (g) the use of the appointment system will be reviewed when the situation has stabilised;

*Regarding paragraph 3.16(d) above*

- (h) he has been monitoring the backlog of cases in the Labour Tribunal through bi-weekly reports. With the establishment of night courts in April 1999, the introduction of Saturday sittings in June 1999 and the creation of two additional day courts in January 2000, the backlog has now been further reduced to 640 cases (compared with 901 cases as at September 1999 — see paragraph 3.9 above);

*Regarding paragraph 3.16(e) above*

- (i) the effectiveness of the measures to clear the backlog of cases will continue to be monitored and reviewed;

*Regarding paragraph 3.17 above*

- (j) the proposal to increase the financial limit of the MECAB's jurisdiction is to be considered by the Administration; and
- (k) it must, however, be pointed out that adjudicators of the MECAB are not legally qualified persons. Any such consideration, apart from the need to demonstrate cost-effectiveness (if the Commissioner for Labour would seek additional resources), will also need to take into account whether it is the best way of preserving the quality of justice delivered and professionalism involved.

3.19 The Commissioner for Labour has said that he has no objection to the recommendation set out in paragraph 3.17 above, subject to additional manpower and other necessary resources being made available to the Labour Department to cope with the additional workload.

## Extract from Report of the Public Accounts Committee No. 34 (June 2000)

**The administration of the Judiciary**

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15. With regard to the experience of other common law jurisdictions in respect of quantitative measurements, the **Judiciary Administrator** said in his letter of 28 April 2000 in *Appendix 26* that:

- most common law jurisdictions used volume of caseload, case profile and waiting time. However, it would be difficult to compare the efficiency of the administration of justice purely on the basis of figures. There were differences in legal provisions, court rules, practice directions etc., which were not fully reflected in reported statistics;
- the outcome of the Judiciary's performance pledges were published in the Controlling Officer's Report as well as the Judiciary's Annual Report which was available to the public. The latter also included a progress report on the various improvements achieved to enhance the efficiency of Judiciary Administration; and
- in respect of the possibility of using the average time lapse at various stages of proceedings as a performance indicator, it should be pointed out that it would be absolutely inappropriate to control, or even attempt to control, the time spent on trials once they had started. Apart from the danger of not allowing parties to the litigation sufficient time to express their claims or defence (hence denying justice), there were factors beyond the control of judges, such as adjournments requested by counsel for negotiations, for calling additional witnesses, or due to unavailability of expert witnesses, that could prolong completion of the trial.

**The Labour Tribunal**

16. The Committee noted that there was a statutory requirement that the Labour Tribunal had to hear a claim within 30 days from the date of filing the case unless the parties concerned agreed otherwise. According to paragraphs 3.5 and 3.8 of the Audit Report, since 1992, the Judiciary had been recording the cases received initially in an appointment register, in order to ensure that all the incoming cases met the 30-day statutory time limit. LegCo Members were informed in 1995 that after setting up the tenth court, the Labour Tribunal should be able to cope with the new cases without resorting to the appointment register mechanism. The Judiciary expected that the Labour Tribunal should thereafter be able to dispense with the appointment register and to formally adopt the practice of filing a case on the date of receipt. Noting that the Labour Tribunal was still relying on the appointment register mechanism, the Committee asked:

## The administration of the Judiciary

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- whether the Judiciary had sought legal advice on whether the use of an appointment register was legally acceptable and whether the adoption of this mechanism had amounted to circumventing the statutory time limit of 30 days;
- whether the Judiciary had considered revising the 30-day statutory requirement by amending the Labour Tribunal Ordinance; and
- why the Judiciary had not fulfilled its promise made in 1995 and was still using the appointment register mechanism.

17. In respect of the 30-day time limit, **Mr Jimmy MA Yiu-tim, Legal Adviser, Legislative Council Secretariat**, said that section 13 of the Labour Tribunal Ordinance stipulated that the registrar should have the case heard not earlier than ten days nor later than 30 days from the filing of the claim. The commencement of the proceedings was dependent on when the claimant officially filed his claim.

18. The **Judiciary Administrator** said that:

- the appointment register had provided a buffer against the increasing caseload of the Labour Tribunal. Without this mechanism, the Labour Tribunal would have difficulties in mobilising its resources in time to cope with the upsurge in labour disputes in the face of the economic downturn. The objective of the mechanism was to assist claimants in filing their claims quickly;
- the Labour Tribunal Ordinance was enacted in 1973. The aspirations of the community, the nature of labour disputes and the way these cases were handled had changed over the years. The Ordinance had also been amended many times. In spite of the discussion on the appointment register throughout the years, it was agreed that there was a practical need to retain the mechanism. While the Judiciary did not rule out the possibility of amending the legislation, it had to take into account the prevailing labour relations and the public's reaction to the proposal of extending the 30-day time limit;

## The administration of the Judiciary

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- in 1995, the Judiciary had projected that with the setting up of the tenth court, it could dispense with the appointment system. However, the projection was distorted as there was a sudden increase in the number of labour dispute cases arising from the financial turmoil from late 1997. This was evidenced by the following figures:

<u>Year</u>	<u>Number of cases</u>
1995	7,645
1996	7,862
1997	6,319
1998	9,476
1999	11,594

- the figures in Figure 3 of the Audit Report had helped to demonstrate that the projection in 1995 was correct. In 1996, the average waiting time in the appointment register was 11 days and the duration from date of filing to date of first hearing was 23 days. Hence, the 30-day statutory requirement could almost be met. As a result of a 50% increase in the number of cases in 1998 and another 22% in 1999, the average waiting time increased from 15 days in 1997 to 27 days in 1998 and to 38 days in 1999;
- in order to cope with the increase in workload, the Judiciary had introduced night sittings in three Labour Tribunal courts and Saturday sittings in one court, in addition to the present set-up of ten. As resources were limited, the use of the appointment system was a reasonable measure to cope with the demand. It was hoped that when the economy improved, the number of labour dispute cases would drop and the practice of filing a case on the date of receipt could then be adopted; and
- the Judiciary noted Audit's recommendation on setting a target for the duration in which a case was kept in the appointment register before the case was formally filed. Since the publication of the Audit Report, the Judiciary had set a target of 30 days in respect of the duration in which a case was kept in the appointment register. This target was a reasonable one and the Judiciary would try its best to adhere to it.



## The administration of the Judiciary

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19. Having regard to the fact that the appointment register mechanism was not provided for in the Labour Tribunal Ordinance, the Committee asked why Audit had recommended that the Judiciary should set a target for the duration in which a case was kept in the appointment register before the case was formally filed. **Mr Dominic CHAN Yin-tat, Director of Audit**, said that Audit did not agree that the appointment register mechanism should be legitimised. In fact, the mechanism was first devised as an interim measure to deal with the increasing workload of the Labour Tribunal. As the present situation still justified the need for this measure, Audit considered that a target should be set to ensure the efficiency of the mechanism. In the longer term, when the effect of the financial turmoil had waned, the Judiciary should consider stopping the practice of using the appointment register as a buffer against increasing caseload.

20. In reply to the Committee's question on when the use of the appointment system would be reviewed, the **Judiciary Administrator** said that:

- the experience in other jurisdictions was that the waiting time for labour dispute cases to be heard was much longer than that of the Labour Tribunal in Hong Kong. Nevertheless, the Judiciary was well aware of the public expectation for resolving labour disputes expeditiously; and
- the Judiciary had undertaken to review the use of the appointment system when the situation stabilised. It would review the waiting time for cases in the appointment register on a bi-weekly basis until it reached zero in terms of the number of days. In the meantime, the performance pledge for the appointment register would be adhered to so that claimants would not have to wait longer than 30 days for filing their claims.

21. The **Judiciary Administrator** supplemented in his letter of 20 April 2000 in *Appendix 27* that:

- according to records, the appointment register had existed in as early as 1987;
- the Judiciary had been adhering to and regularly promulgated the statutory provision that a claim would be heard not earlier than ten days nor later than 30 days from the date the claim was filed. Such information was published in the booklet entitled "Labour Tribunal" in the Guide to Court Services series. The same information was also accessible through the Judiciary Homepage on the internet and given in response to all verbal or written enquiries;

## The administration of the Judiciary

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- since the Labour Tribunal did not allow legal representation, the Tribunal Officers had a duty to assist claimants in the preparation work for filing their claims in order to reduce the number of visits that they would have to make before hearing. An appointment system would ensure that adequate attention was given to the claimants when they turned up at the scheduled time. The system could also even out the caseload to ensure that manpower resources were optimally deployed. It was a practical necessity, particularly in group cases where hundreds of claims were involved; and
- barring unforeseen circumstances, the Labour Tribunal should be able to adhere to the target waiting time of 30 days for filing and 30 days for hearing, and to reduce the backlog gradually. He considered that these were very reasonable waiting time targets given the volume of cases, their complexity and the large number of claimants involved. However, he would have difficulties in specifying a timeframe within which the backlog of cases could be cleared as there were many variables beyond the control of the Judiciary which would lead to substantial fluctuations in caseload.

22. The Committee noted from paragraph 3.7 of the Audit Report that the Minor Employment Claims Adjudication Board (MECAB) was established in 1994 to take over the minor cases from the Labour Tribunal. In 1997, the financial limit of the MECAB's jurisdiction was increased to \$8,000 per claimant and the maximum number of claimants involved in a case was increased to ten. The Committee also noted Audit's view in paragraph 3.15 that there was a need to review the financial limit of the MECAB's jurisdiction so that the pressure of increasing workload of the Labour Tribunal could be eased by transferring some of the minor employment claims to the MECAB for adjudication. The Commissioner for Labour indicated in paragraph 3.19 that he had no objection to this recommendation, subject to additional manpower and other necessary resources being made available to the Labour Department to cope with the additional workload. However, in paragraph 3.18(k), the Judiciary Administrator pointed out that adjudicators of the MECAB were not legally qualified persons. Any consideration of increasing the financial limit of the MECAB's jurisdiction, apart from the need to demonstrate cost-effectiveness, would also need to take into account whether it was the best way of preserving the quality of justice delivered and professionalism involved. In view of these comments, the Committee asked:

- how effective the MECAB was in providing the adjudication service; and
- how the waiting time of labour dispute cases could be shortened while the quality of justice could be ensured.

## **The administration of the Judiciary**

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23. **Mr Matthew CHEUNG Kin-chung, Commissioner for Labour**, said that:

- the MECAB had proven to be an effective and efficient mechanism. The adjudication of employment claims was conducted within five weeks after filing. About 67% of the cases could be concluded in one hearing session. There was only a small number of applications for leave to appeal to the Court of First Instance against the decisions of the MECAB. None of the appeal applications in recent years was successful. The number of cases reviewed was also very small. Twenty-three cases were reviewed in 1998 and 16 in 1999. All these figures showed that the parties concerned were satisfied with the adjudication service provided by the MECAB;
- the Labour Department had not conducted any user satisfaction survey on the service provided by the MECAB. However, the unions in general were unanimous in their endorsement of the mechanism. There had been very few complaints from employers;
- all Adjudication Officers of the MECAB were experienced Senior Labour Officers who had been thoroughly trained. The Department of Justice also conducted a 14 half-day legal training programme for these officers. They were therefore sufficiently competent to deal with the labour dispute cases under the MECAB;
- subject to the availability of additional resources, the Labour Department was prepared to take up more minor employment claims. During an earlier discussion with the Judiciary Administrator, the possibility of further co-operation between the Labour Tribunal and the Labour Department was left open for future consideration. Various options could be explored. For example, the MECAB could have one night Board and one Saturday Board. There could also be a trial period of several weeks to six months so that the MECAB could help ease the Labour Tribunal's backlog; and
- based on the workload in the previous four months, it was projected that if the financial limit of the MECAB's jurisdiction were raised to \$10,000, the MECAB would be able to handle 700 extra cases. An additional one and a half Adjudication Officers would be required to handle these cases.

## The administration of the Judiciary

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24. In *Appendix 28*, the **Commissioner for Labour** provided the Committee with some background information on the establishment of the MECAB and some relevant statistics. He also pointed out in his letter of 17 April 2000 in *Appendix 29* that:

- in the light of the feedback from various channels, the Labour Department believed that the MECAB had been operating effectively and efficiently to the satisfaction of its clients. The feedback gathered included that made by members of the public sitting on the Labour Department Customer Liaison Group which was set up in 1993 for the purpose of soliciting views and monitoring public expectations on the Department's services. Occasional comments from workers' groups and trade unions also reinforced the Department's belief that the public had found the MECAB's service satisfactory;
- the number of applications for leave to appeal to the Court of First Instance against the decision of the MECAB had been very small over the years. There were eight in 1997, eleven in 1998 and nine in 1999, which represented only 0.5%, 0.4% and 0.3% of the total number of cases concluded in the three years respectively. None of these appeal applications was successful in reversing the MECAB's decisions; and
- the average cost incurred for a case dealt with by the MECAB in 1999 was \$5,873.

25. The Committee noted from a memo dated 23 May 2000 from the Acting Judiciary Administrator to the Director of Audit in *Appendix 30* that the average cost for a case handled by the Labour Tribunal in 1999/2000 was \$7,636.

26. Regarding the Judiciary's concern about the fact that the Adjudication Officers of the MECAB were not legally qualified persons, the **Judiciary Administrator** said that:

- disputes between private individuals were civil cases. Whether or not these cases should be left to an administrative department rather than the court for adjudication was an important policy issue. The Judiciary was only responsible for enforcing the law. However, it was prepared to take part in discussing this subject with the Commissioner for Labour, other government officials and LegCo Members; and

## The administration of the Judiciary

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- the establishment of the MECAB in 1994 was based on practical considerations. It was an administrative means to relieve the heavy workload of the Labour Tribunal. While it had proven to be an effective mechanism to deal with minor employment claims, whether an administrative department should be charged with the responsibility for adjudicating civil cases remained a serious matter and should be further considered.

27. In view of the concern expressed by the Judiciary Administrator, the Committee invited the Secretary for Education and Manpower to put forth his views on the Government's policy in respect of the purpose and functions of the MECAB, and on the way forward. In his letter of 19 April 2000 in *Appendix 31*, **Mr Joseph W P WONG, Secretary for Education and Manpower**, said that:

- although the Adjudication Officers of the MECAB were not legally qualified, they were all veteran Senior Labour Officers who were highly experienced in handling labour disputes and conversant with the Employment Ordinance and employment practices. They had also received tailor-made training, including basic legal knowledge, before taking up the adjudication duties under the MECAB Ordinance;
- in view of the proven effectiveness of the MECAB in adjudicating minor employment claims, the MECAB was ready to help ease the backlog of the Labour Tribunal. But it was up to the Judiciary to consider whether or not to take up this offer; and
- the financial limit of the jurisdiction of the MECAB was raised in June 1997 from \$5,000 per claimant to \$8,000 per claimant to offset the effect of cumulative wage increases since December 1994. If necessary, the financial limit would be reviewed in the light of changes in wage levels.

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### Utilisation of Judiciary's resources

28. The Committee noted from paragraphs 4.8 and 4.9 of the Audit Report that LegCo Members had raised concern about the average court sitting hours of judges since 1993. On the question of what should be the reasonable time for judges to spend in open court, the Chief Justice said in 1994 that he had given it considerable thought and had come to the conclusion that four hours a day was satisfactory as an average taken over the year. However, after a lapse of six years, the Judiciary had still not established any standards for the average court sitting hours for different levels of courts/tribunals. Having regard to the

## The administration of the Judiciary

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- (a) has agreed that there is a need to conduct regular reviews of the financial limits of the civil jurisdiction at all levels of courts, and a reviewing mechanism should be devised in consultation with judges, the Department of Justice, the Legal Aid Department and the legal profession;
  - (b) has agreed to exhaust the possibilities of redeployment before resorting to creating additional posts in the courts/tribunals; and
  - (c) will reduce the number of acting appointments for Deputy Judges when the pressure on the Court of First Instance of the High Court eases and when the waiting time is reduced to within target;
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### The Labour Tribunal

- express dismay that the Judiciary has resorted to using the appointment register mechanism as a means to circumvent the 30-day statutory time limit for the Labour Tribunal;
- urge the Judiciary Administrator to:
  - (a) urgently review the use of the appointment register mechanism;
  - (b) take effective measures to clear the backlog of cases in the Labour Tribunal, including the introduction of night court and Saturday court sittings; and
  - (c) actively consider raising the financial limit of the Minor Employment Claims Adjudication Board's (MECAB) jurisdiction so that the MECAB can take over more minor employment claims;

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### Utilisation of Judiciary's resources

- express serious dismay that:
  - (a) the issue of using court sitting time as an indicator for measuring the efficiency in the utilisation of judicial time, which was first raised by the Legislative Council in 1993, has still not been resolved, despite the Chief Justice's indication in 1994 that four hours a day was satisfactory as an average taken over the year; and
  - (b) there has been no sign of improvement to the court sitting hours of judges

Extract from Report of the Public Accounts Committee No. 37 (February 2002)

**III. Report of the Public Accounts Committee on Report No. 34 of the Director of Audit on the Results of Value for Money Audits**

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9. **The administration of the Judiciary** (Chapter 3 of Part VI of P.A.C. Report No. 34). The Committee were informed that:

**Labour Tribunal**

- for the first seven months of 2001, there had been 5,648 cases filed in the Labour Tribunal, representing only a very slight decrease of 2.9% over the same period in the previous year. As the caseload was still heavy, the Judiciary was considering the operation of an additional court in October 2001 to relieve the workload;
- the Judiciary considered that the appointment register was still a good mechanism to ensure that claimants were properly served on a day-to-day basis. The Judiciary did not think that this was the opportune time to dispense with it. The Judiciary would keep the situation under review;

**Minor Employment Claims Adjudication Board (MECAB)**

- having reviewed the movement of average wage rates since 1997, the Commissioner for Labour advised that she had no plan to revise the financial limit of MECAB at present. However, she would continue to keep the situation under review;

**Further developments**

10. Regarding the caseload of the Labour Tribunal, the Committee enquired:

- about the reduction of waiting time that had been achieved and the current waiting time for labour tribunal cases; and
- whether an additional court had been established in October 2001 as scheduled.

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11. In his letter of 4 January 2002, in *Appendix 5*, the **Judiciary Administrator** informed the Committee that:

- for the year 2001, there were 10,450 cases filed in the Labour Tribunal, representing an increase of 8.7% over the 9,611 cases in 2000. The bulk of the increase was recorded in the latter part of 2001. To relieve the heavy workload, the Labour Tribunal had deployed resources to turn a night court into a day court from 8 October 2001. The Labour Tribunal now operated 13 day courts, two night courts and one Saturday (morning) court;
- in early October 2001, the waiting time from appointment to filing was 14 days and that from filing to first hearing was 26 days. At the end of December 2001, the corresponding waiting times were 15 days and 23 days respectively; and
- the operation of one additional day court had improved the waiting times. The Judiciary was monitoring the situation closely and would consider the feasibility of introducing further relieve measures if necessary.

12. The Committee wish to be kept informed of further progress on this subject.



Extract from Report of the Public Accounts Committee No. 39 (February 2003)

IV. Report of the Public Accounts Committee on the Reports of the Director of Audit on the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2001 and the results of Value for Money Audits (Report No. 37) and supplemental reports of the Public Accounts Committee on Report Nos. 35 and 36 of the Director of Audit on the Results of Value for Money Audits [*P.A.C. Report No. 37*]

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**Labour Tribunal**

- for the first six months of 2002, the Labour Tribunal received 5,966 cases, representing an increase of 23% as compared with 4,847 cases for the same period last year. Having regard to the current economic environment, the Judiciary did not envisage that the number of cases would drop in the near future and therefore considered it appropriate to maintain the appointment register in the meantime so that claimants could be served properly on a day-to-day basis.

**Further developments**

8. In respect of the cases handled by the Labour Tribunal, the Committee asked:

- whether measures would be taken to cope with the increasing caseload of the Labour Tribunal;
- the reduction of waiting time that had been achieved since the publication of the Committee's Report in June 2000 and the current average waiting time for labour tribunal cases; and
- the respective percentages of cases that were withdrawn by the claimants before filing and between filing and first hearing, in each of 2001 and 2002.

9. The **Judiciary Administrator** responded, vide his letter of 7 January 2003 in *Appendix 3*, that:

- in 2002, the Labour Tribunal received an all-time high of 12,326 cases, representing an increase of 18% over 2001 (10,450 cases), or 6% over the previous peak in 1999 (11,594 cases). To keep up with the increased demand, the Labour Tribunal had introduced the following measures:
  - (a) replacing one night court by a day court in October 2001, thereby increasing the capacity of the courts to deal with trials; and
  - (b) increasing the output of the Tribunal Officers in case preparation, thereby enabling more cases to be ready for trial;
- with the implementation of the above measures, the average waiting times at the Labour Tribunal had been maintained within targets as follows:

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	<u>Waiting Time (days)</u>			
	<u>Targets</u>	<u>2001</u>	<u>2002</u>	<u>2003</u> <u>as at 6 January 2003</u>
From appointment to filing of a case	30	14	19	9
From filing of a case to hearing	30	24	25	20

- as regards cases withdrawn by the claimants, the information was as follows :

	<u>2001</u>	<u>2002</u>
	<u>(As a percentage of all cases filed in a year)</u>	
Before filing	9.6%	8.2%
Between filing and first hearing	6.7%	6.5%

10. The Committee wishes to be kept informed of further progress on this subject.

- ~~(a) of the Financial Secretary's purpose in mentioning to the civil service unions that civil servants would face a pay cut;~~
- (b) whether it will implement its decision on the pay cut in the face of objections from all or most of the civil service unions; and
- (c) of the time to announce the decision on the pay cut and its rate?

**SECRETARY FOR THE CIVIL SERVICE** (in Chinese): Madam President, the Financial Secretary met with representatives of the civil service central consultative councils and key service-wide staff unions in January 2002 as part of the consultation process in preparing the 2002-03 Budget. At the meeting, the Financial Secretary explained that the Government of the Special Administrative Region is facing a serious budget deficit. Public expenditure is projected to account for 23% of the GDP in the coming financial year. In drawing up the proposals for the 2002-03 Budget, therefore, the Government will need to carefully consider all views and balance the interests of different sectors with a view to formulating measures that will be in the long-term interest of the community as a whole.

Under the existing mechanism, the Government will consider the results of the annual private sector Pay Trend Survey and other important factors, including the state of the economy, budgetary considerations, changes to the cost of living, the staff sides' pay claims and civil service morale, before deciding on the annual civil service pay adjustment. The results of the 2002 Pay Trend Survey will be known in May. We shall decide on this year's civil service pay adjustment ~~then in accordance with the existing mechanism.~~

### **Waiting Time for Labour Tribunal Cases**

10. **MR TAM YIU-CHUNG** (in Chinese): Madam President, it is learnt that this year's waiting time for Labour Tribunal cases, as measured from the date of appointment to the date of filing and from the date of filing to the date of hearing, is projected to increase by about 30% to 82% when compared with that in the previous two years. In this connection, will the Government inform this Council:

- (a) *of the average number of cases dealt with by each day court and night court of the Tribunal in the past two years;*
- (b) *whether it has estimated the number of cases to be dealt with by the Tribunal this year; if so, of the growth in such number as compared to those in each of the past two years; and*
- (c) *whether it has planned to introduce measures, including the provision of more night courts, to shorten the waiting time for the Tribunal cases; if so, of the details; if not, the reasons for that?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Chinese): Madam President, we have consulted the Judiciary on the question and have received the following response:

The Judiciary's performance targets in terms of waiting times for the Labour Tribunal are as follows:

	<i>Targets</i>	<i>Waiting Time (Days)</i>		
		<i>2000 (Actual)</i>	<i>2001 (Actual)</i>	<i>2002 (Planned)</i>
From appointment to filing of a case	30	11	14	20
From filing of a case to first hearing	30	21	23	30

In the past two years, the Labour Tribunal was able to achieve actual waiting times way below the targets. In 2002, the Labour Tribunal would continue to strive to keep the waiting times as short as possible, and in any case, within the targets set.

Answers to the specific questions are as follows:

- (a) In the past two years, the average numbers of cases handled by each day court and each night court were:

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	2000	2001
Day court	705	782
Night court	385	319

The night courts would normally handle cases with less complexity on facts and law, those with a smaller number of parties per case and those requiring no interpretation.

- (b) The Labour Tribunal dealt with 9 611 cases in 2000 and 10 450 cases in 2001. The Judiciary estimates that the number of cases for 2002 would remain at the 2001 level. That notwithstanding, the Judiciary envisages that the proportion of cases with more complexity and with more number of parties per case will be on the rise. The Judiciary has therefore adjusted upward the planned waiting time for 2002.
- (c) The Labour Tribunal keeps its caseload and the average waiting times from filing to trial under close monitoring. Although the average waiting times have been within targets, the Labour Tribunal replaced one night court by a day court in October 2001, with a view to increasing the capacity of the courts to deal with trials and respond to the increased number of more complex cases, such as claims for compensation under section 32P of the Employment Ordinance (Cap. 57), and larger group cases. As explained under part (a), such cases are not suitable for night courts. The Judiciary will continue to monitor the situation.

#### ~~Placement Work of Labour Department for Mainland Jobs~~

11. ~~MR YEUNG YIU-CHUNG (in Chinese): Madam President, at the job centres of the Labour Department (LD), job seekers can register their applications for vacancies in the Mainland. It is learnt that the LD is designing a new website to provide more information to Hong Kong residents who intend to look for jobs in the Mainland. In this connection, will the Government inform this Council:~~

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~~(b) A mechanism is already in place to ensure that the roles and functions of the CMBS and the BMCCs do not overlap. The Director of Home Affairs has established an inter-departmental steering group to co-ordinate the work of the relevant departments. The group, among other tasks, co-ordinates the respective roles and functions of the CMBS and the BMCCs with a view to avoiding overlap.~~

As mentioned in (a) above, the CMBS is an integrated and collaborative approach which ultimately will enable owners of selected buildings to meet their statutory obligations in building safety. The BMCCs were set up to assist owners' organizations to make general improvements in building management. The two have different purposes. They complement each other and do not overlap.

~~(c) The BD has presented the CMBS to various committees of the District Councils in the past two months. The views and comments raised by District Council members in these meetings will be taken into account in refining the *modus operandi* of the CMBS and in formulating similar exercises in future.~~

### Cases of Default on Payment of Wages

8. **MR ANDREW CHENG** (in Chinese): *Madam President, regarding employers who default on payment of wages to their employees, will the Government inform this Council:*

- (a) *of the total number of such cases (other than those in which the employers have become insolvent) received by the Labour Department over the past three years, and the number of employees involved in such cases; and*
- (b) *among such cases in (a), the number of those in which the Labour Tribunal (LT) ruled that the employers concerned had defaulted on payment of wages to their employees; the respective numbers of cases in which the employers complied and did not comply with the orders made by the Labour Tribunal in respect of their default on payment of wages; and the number of successful prosecutions against the employers for non-compliance with such orders?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Chinese): Madam President,

- (a) The Labour Department has handled 20 555 claims against non-payment of wages over the past three years. However, the Labour Department has not kept any record of the number of employees involved in such cases.

The above figure includes all cases in which employees complained about employers' failure to comply with the legal requirements to pay wages when they lodged their claim. There is no statistical breakdown of the reasons for non-compliance, such as insolvency or wilful default.

- (b) Over the past three years, the LT has handled a total of 13 855 claims for non-payment of wages. Since the LT does not keep track of or collate statistics on its rulings, the number of cases in which the LT ruled that the employers concerned had in fact defaulted on payment of wages to their employees is not available.

According to the provisions of the Labour Tribunal Ordinance, a final award or order of the LT which has been registered in the District Court shall become a judgement of the District Court and may be enforced accordingly.

Under the District Court Ordinance and the Rules of the District Court, the District Court may, for the effective enforcement of an award or order made by the LT, make various orders including seizure and sale of property of the debtor, requiring the bank in which the debtor has deposited money to make payment to the creditor from the debtor's account, imposing charges on any land or interest in land of the debtor, prohibiting the debtor from leaving Hong Kong, and so on.

Information from the Judiciary shows that in the past three years the District Court has made a total of 805 orders in respect of the enforcement of awards or orders made by the LT. As the Judiciary has not categorized the claims involved, the number of orders made by the District Court for the purpose of enforcing the LT's awards or orders in relation to non-payment of wages is not available.