

立法會
Legislative Council

LC Paper No. CB(2)3044/03-04
(These minutes have been seen
by the Administration)

Ref : CB2/PL/AJLS

Panel on Administration of Justice and Legal Services

**Minutes of meeting
held on Monday, 24 May 2004 at 5:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon James TO Kun-sun
Hon CHAN Kam-lam, JP
Hon Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP

Members absent : Hon TAM Yiu-chung, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP

Public officers attending : Item IV
Judiciary Administration

Mr Wilfred TSUI
Judiciary Administrator

Mr Augustine CHENG
Deputy Judiciary Administrator (Operations)

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

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mr Paul WOO
Senior Council Secretary (2)3

Action

I. Confirmation of minutes of meeting

The Chairman informed members that the minutes of the meeting on 26 April 2004 would be confirmed at the next meeting pending comments, if any, from the Law Society of Hong Kong on the draft minutes concerning the item "Professional Indemnity Scheme of the Law Society of Hong Kong".

II. Information papers issued since last meeting

(LC Paper Nos. CB(2)2185/03-04(01), 2198/03-04(01), 2303/03-04(01) and 2326/03-04(01)).

2. Members noted that the following papers had been issued -

- (a) LC Paper No. CB(2)2185/03-04(01) - letter dated 24 March 2004 from Chairman of the Panel to the Commissioner of Insurance on the relevance of the proposed Policyholders' Protection Fund to the legal profession;
- (b) LC Paper No. CB(2)2198/03-04(01) - written response from the Administration to matters raised at the meeting on 22 March 2004 on legal aid for mediation;
- (c) LC Paper No. CB(2)2303/03-04(01) - an updated list of the names of the solicitors/solicitors' firms who had submitted identical letters to the Panel on the Solicitors Professional Indemnity Scheme; and
- (d) LC Paper No. CB(2)2326/03-04(01) - written response from the Judiciary Administration to matters raised at the meeting on

Action

22 March 2004 on Evaluation Study on the Pilot Scheme on Family Mediation.

III. Items for discussion at the next meeting

(LC Paper Nos. CB(2)2427/03-04(01) - (02) and 2220/03-04(01) - (02))

Regular meeting on 28 June 2004

3. Members agreed that the following items should be discussed at the regular meeting of the Panel on 28 June 2004 -

- (a) Resource Centre for Unrepresented Litigants; and
- (b) Report of Working Group to study issues relating to imposition of criminal liability on the Government or public officers.

(Post-meeting note - On the instruction of the Chairman, the item "Transcript Fees" was added to the agenda for the meeting on 28 June 2004, upon receipt of the Judiciary Administration's response to issues raised at the meeting on 23 June 2003.)

Special meeting to discuss "Professional Indemnity Scheme of the Law Society of Hong Kong"

4. The Clerk informed members that the Law Society had advised in writing on 20 May 2004 that it was continuing to have discussions with interested parties on the Professional Indemnity Scheme (PIS) and was not in a position to revert to the Panel at this meeting on the progress. According to the Law Society, it would convene another Extraordinary General Meeting on the matter.

5. The Chairman referred members to a paper just received from the Department of Justice (DoJ) on "Review of Professional Indemnity Scheme of the Law Society of Hong Kong" which was tabled at the meeting (circulated to the Panel after the meeting vide LC Paper No. CB(2)2582/03-04(01)). The paper was prepared in response to the issues raised at the Panel meeting on 26 April 2004 when the item was last discussed.

Action

6. Members noted from the paper that the position of DoJ was that it did not support the two options for the future arrangement of professional indemnity insurance on which the Law Society was consulting its members, i.e. a Master Policy Scheme and a Qualifying Insurers Scheme, unless the schemes were backed up by other mechanisms such as a Policyholders' Protection Fund (PPF) or arrangement of some form of "insurance on insurance".

7. Ms Miriam LAU expressed dissatisfaction at DoJ's response which, in her view, offered no constructive advice on how the problems facing the solicitors profession could be solved and how the Administration could assist the profession in finding realistic solutions. The Chairman pointed out that the establishment of a PPF had not yet been adopted, and as advised by the Commissioner of Insurance, it would take three to five years for implementation if a PPF was adopted.

8. Mr Martin LEE said that the issue involved great public interest as a vibrant legal profession was indispensable for the safeguarding of the rule of law. He opined that the Administration should take a proactive role in helping the profession to tackle the present situation which had threatened the survival of many solicitors.

9. Mr Albert HO referred to paragraph 40 of DoJ's paper which made reference to the operation of the Travel Industry Compensation Fund and the Employees' Compensation Insurer Insolvency Scheme. He considered that a more relevant example to look at in the context of an indemnity fund for solicitors was the Unified Exchange Compensation Fund (UECF) established and maintained by the Securities and Futures Commission under the Securities Ordinance. He suggested that the Administration should be asked to provide more information on UECF for the Panel's consideration.

10. Members considered that it was necessary for the Panel to hold a special meeting as soon as practicable to further discuss the matter with the Law Society and the Administration. As suggested by Mr Albert HO, the Panel agreed to also invite representatives of the group of solicitors who had previously written to the Panel expressing views on the PIS (the PIS Action Group).

11. The Chairman requested the Clerk to provide the DoJ's paper to the Law Society and the PIS Action Group for their consideration.

Action

(*Post-meeting note* - A special meeting was held on 14 June 2004. The Administration's response to the issue raised by Mr Albert HO in paragraph 9 above was circulated to the Panel vide LC Paper No. CB(2)2700/03-04(01)).

Rules on notarial practice

12. The Chairman said that the Hong Kong Society of Notaries had briefed the Panel on the progress of the drafting of the eight sets of Rules on notarial practice at the meeting on 20 December 2001. At the meeting, the Society advised the Panel that it would consult its members on the draft Rules and revert to the Panel on the outcome of the consultation exercise. The Chairman informed members that the Society had recently provided the Secretariat with the draft Rules and a report summarizing the comments of some of the respondents and the follow-up actions taken. The report had been circulated to the Panel (LC Paper No. CB(2)2220/03-04(02)).

13. Members agreed that as the policy aspects of the Rules had been considered by the Panel and the Rules were subject to the negative vetting procedure of the Legislative Council upon gazettal, it was not necessary for the Panel to discuss the draft Rules. It would be a matter for the House Committee to decide whether a subcommittee should be formed to scrutinize the Rules after the Rules were gazetted.

(*Post-meeting note* - On behalf of the Panel, the Clerk wrote to the Hong Kong Society of Notaries on 1 June 2004 to inform the Society of the Panel's position that it had no objection to the Rules being introduced into the Council for scrutiny under the negative vetting procedure.)

IV. Court procedure for repossession of premises

(LC Paper Nos. CB(2)2427/03-04(03), 2345/03-04(01), 1100/03-04(03) - (04), 2457/03-04(01) and 2490/03-04(01))

14. The Chairman recapitulated that at the meeting on 29 January 2004, the Judiciary Administration briefed the Panel on the impact of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2002 and measures to streamline the court procedure for repossession of premises. The Judiciary Administration had been asked to revert to the Panel on the progress in the improvement measures.

Action

15. Judiciary Administrator (JA) briefed members on the paper provided by the Judiciary Administration (LC Paper No. CB(2)2427/03-04(03)) which reported on the progress in the new measures implemented to shorten the repossession procedure since the previous meeting and explained the Judiciary Administration's position on the proposals made by members at the meeting. The responses of the Judiciary Administration were summarized as follows -

- (a) the new listing practice of setting aside one day every week since 5 January 2004 for a court in the Labour Tribunal to deal exclusively with repossession cases in the form of callover hearings had facilitated early disposal of simple and non-contested cases. The disposal rate was about 84% for the first four months of operation. For the more complicated cases, the new practice had shortened the waiting time from the date of application for repossession to the date of first hearing in spite of an increased caseload (a reduction from 45 days in 2003 to 40 days in the first quarter of 2004);
- (b) under the new listing system, repossession cases were listed for callover hearings also on other days whenever there were vacant slots in a court's diary. This had resulted in callover hearings being listed for some extra days in a month. In view of the present stable caseload and the need to balance the interests of parties in non-repossession cases, the Judiciary Administration considered that there was no need to assign a specific time slot on a daily basis for callover hearings as suggested by the Panel;
- (c) the average waiting time for Writs of Possession executed by Bailiffs (25 days in 2003) had been sustained in the first quarter of 2004, in spite of a slight increase in the number of Writs issued;
- (d) on the proposal for the Lands Tribunal to grant a default order for repossession right away if the defendant had not filed a notice of opposition, the Chief Justice had directed that the Lands Tribunal Rules as a whole should be reviewed. Further opportunities to shorten the time for repossession would be explored, and the Panel would be consulted when the review was completed and relevant amendments were proposed; and

Action

- (e) the Judiciary Administration was seeking to shorten the time for processing applications for default judgment to seven days in the near future, through further procedure reviews and staffing re-deployment within the Lands Tribunal.

16. Mr CHAN Kam-lam and Mr Albert HO said that they were generally satisfied with the measures introduced, adding that the Judiciary Administration should continue to explore viable means to shorten the repossession procedure. Ms Miriam LAU said that she hoped that the measures introduced to reduce the time for repossession of premises would be effective and sustainable generally, not only in rare and isolated cases. She opined that for instance, the target to reduce the lead time between the date of application for repossession and the date of hearing to 35 days might not be easily achieved in the majority of cases.

17. Members noted that in a letter dated 21 May 2004 to the Panel from the Law Society (LC Paper No. CB(2)2490/03-04(01)), the Society had provided a schedule setting out the different steps in the process for obtaining repossession of premises after a judgment was given. The schedule showed that it took about four months to complete the procedure.

- JA 18. JA said that the time stated in the schedule in the Law Society's letter did not appear to have accurately reflected the actual situation. At the request of the Chairman, JA agreed to give a written response to the Law Society and provide a copy of the response to the Panel for information.

(Post-meeting note - The Law Society wrote to the Panel on 31 May 2004 and explained that the information cited was based on an actual case. The Law Society's letter was circulated to the Panel vide LC Paper No. CB(2)2606/03-04(01) and provided to the Judiciary Administration for information.)

19. Members agreed that the item should be followed up by the Panel in a year's time.

20. The meeting ended at 6:10 pm.