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法律學院  
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Hon Margaret Ng,  
Chairman,  
Panel on Administration of Justice and Legal Services  
Legislative Council

20<sup>th</sup> July 2005

Dear Madam Chairman,

### **Chambers Hearings in Civil Proceedings**

I am writing, as requested at the meeting of the Panel on Administration of Justice and Legal Services on 12<sup>th</sup> July 2005, to put the comments I made at that meeting with reference to Practice Directions 25.1 and 25.2 in written form.

Firstly may I reiterate that these are my own views and are not the views of the School of Law, City University of Hong Kong as a whole. Secondly, I wish to repeat that in general terms, I welcome and support the trend towards openness and transparency that is represented by Practice Directions 25.1 and 25.2 and note the benefits of such openness for legal education in Hong Kong and for the further development of Hong Kong's common law sources.

With regard to the two specific comments I made during the meeting of 12<sup>th</sup> July 2005, I set those out below.

*1. Concerning chambers hearings closed to the public by virtue of the PD25.1 Schedule 2 exemptions (Article 10 BORO):*

Under Schedule 2 to PD 25.1, a significant number of family law proceedings will continue to be heard in chambers closed to the public, by reference to Article 10 BORO. While there are good reasons for maintaining confidentiality and anonymity in a number of these cases, law reporting is especially important in the field of family law given that family law related ordinances often confer a very wide discretion on the court in the exercise of its statutory powers.

Steps are being taken to enhance reporting in the area of family law, including the launch later this year of a specialist family law reports series. Furthermore, the Judiciary in the Family Court now makes available selected judgments on the

Judiciary website and indeed PD 25.2 provides for the judiciary to recommend or approve reporting of cases heard in closed chambers hearings. Nonetheless, the current system of recommendations depends on the initiative of individual judges or practitioners engaged in discrete cases. Where the area of law, like family law, is such that the courts exercise a great deal of discretion in applying the legislation, legal practitioners, academics and students would, I suggest, enjoy numerous advantages in terms of accessibility, clarity, consistency and certainty of law if a systematic and comprehensive system of law reporting was in place. To that end, I would encourage the Judiciary, where possible, to allow a limited class of law reporter to attend those chambers hearings which are otherwise closed to the public under PD 25.1 Schedule 2.

By creating a limited class of law reporter, taken from the ranks of officers of the court, including solicitors and barristers, the court would have control over the reporter as that officer of the court will owe a duty to the court. Further safeguards may be put in place by limiting the content of the law report to: anonymised titles or nomenclature for each party; the causes of action; submissions of law arising in the proceedings; the decision of the court and the reasoning of the court in coming to that decision.

The presence of the law reporter would be an addition to the existing judicial recommendations for reporting and the law reporter would need to seek approval from the judge to report the case. However by being present across the range of family proceedings, the law reporter(s) would obtain an overview of trends across cases and may offer an additional previously unforeseen reason for reporting particular cases.

When considering whether to grant permission to report, I would encourage the judiciary not to be guided overwhelmingly by the wishes of the parties and, where the parties do not wish a significant case to be reported, to reassure the parties that the facts are sufficiently anonymised so that the individual parties may not be identified.

## *2. Concerning access by researchers to court files of cases heard in closed chambers*

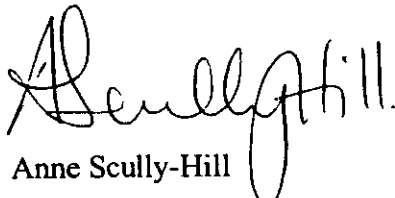
At present, it seems that if a researcher seeks access to court files relating to closed chambers hearings, the researcher should first seek the consent of the parties to the cases in order to gain access to the files. Where a large number of files, such as divorce proceedings files are concerned, gaining consent of all the parties becomes an overwhelmingly onerous burden on the researcher. Therefore, an anonymised

synopsis as a separate appendix or addendum to the case file would be most useful. This innovation would aid the collection of raw data and the development of empirical legal research in Hong Kong. Consequently it would become possible to establish facts relating to the application for, and award of, existing legal remedies in areas of law which usually fall to be heard in closed chambers.

Thus a bona fide researcher would, after seeking permission of the Family Court, be able to gain access to the necessary but anonymous raw data, including the application or claim, the cause of action, the court's decision and the nature of any remedy or order granted.

Having set out the two points I raised at the meeting of 12<sup>th</sup> July, I would like to thank the Panel for extending the invitation to attend and for hearing me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Anne Scully-Hill', written in a cursive style.

Anne Scully-Hill  
Associate Professor