

立法會  
*Legislative Council*

LC Paper No. CB(2)327/04-05  
(These minutes have been seen  
by the Administration)

Ref : CB2/PL/AJLS+MP

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

**Minutes of joint meeting  
held on Tuesday, 9 November 2004 at 5:00 pm  
in Conference Room A of the Legislative Council Building**

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

Hon Margaret NG (Chairman)  
Hon LI Kwok-ying, MH (Deputy Chairman)  
\* Hon Albert HO Chun-yan  
Hon Miriam LAU Kin-ye, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Audrey EU Yuet-mee, SC, JP

Members of Panel on Manpower

Hon LAU Chin-shek, JP (Chairman)  
# Hon KWONG Chi-kin (Deputy Chairman)  
Hon LEE Cheuk-yan  
Hon LEUNG Yiu-chung  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Andrew CHENG Kar-foo  
Hon Abraham SHEK Lai-him, JP  
Hon LI Fung-ying, BBS, JP  
Hon Tommy CHEUNG Yu-yan, JP  
Hon Frederick FUNG Kin-kee, JP  
Hon WONG Kwok-hing, MH  
Hon Andrew LEUNG Kwan-yuen, SBS, JP

\* Also a member of Panel on Manpower

# Also a member of Panel on Administration of Justice and  
Legal Services

**Member attending** : Hon Alan LEONG Kah-kit, SC

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

Hon Martin LEE Chu-ming, SC, JP  
Hon MA Lik, JP

Members of Panel on Manpower

Hon CHAN Yuen-han, JP  
Hon Vincent FANG Kang, JP  
Hon LEUNG Kwok-hung

**Public Officers  
attending** : Item II

Economic Development and Labour Bureau

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

Mr Alan WONG  
Assistant Commissioner for Labour (Labour Relations)

Judiciary Administration

Mr Wilfred TSUI  
Judiciary Administrator

Mr Augustine L S CHENG  
Deputy Judiciary Administrator (Operations)

Mr WONG Wai-man  
Registrar (Labour Tribunal)

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

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

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Action

**I. Election of Chairman**

Ms Margaret NG was elected Chairman of the joint meeting.

**II. Report of the Working Party on the Review of the Labour Tribunal**

(LC Paper No. CB(2)136/04-05 – Report of the Working Party on the Review of the Labour Tribunal published in June 2004

LC Paper No. CB(2)140/04-05 – Paper enclosing minutes of joint meetings on 6 May 2003, 19 June 2003 and 24 May 2004

LC Paper No. CB(2)175/04-05(01) – Written submission from The Hong Kong Federation of Trade Unions)

2. On behalf of the Panels, the Chairman thanked the Working Party on the Review of the Labour Tribunal for providing its Report on the Review of the Labour Tribunal (the Report) for the Panels' consideration.

3. At the invitation of the Chairman, the Judiciary Administrator (JA) briefed members on the Report and the recommendations contained therein. He informed members that all the recommendations had been accepted by the Chief Justice. Except for those involving legislative amendments which were being followed up, the following recommendations on measures to improve the operation and practices of the Labour Tribunal (the Tribunal) had been implemented –

- (a) recommendations 4 to 10 on attempts at settlement undertaken in the Tribunal;
- (b) recommendations 13 and 14 on supply of information by the parties and provision of guidance and information for the parties;
- (c) recommendation 16 on arrangements for call-over hearings;
- (d) recommendation 17 on compliance of the parties with Tribunal directions;
- (e) recommendations 19 to 21 on early disclosure of information by the parties;
- (f) recommendations 23 to 26 on managing the hearings and the trial;
- (g) recommendation 29 on application of information technology and workflow and work practices in the Tribunal Registry;
- (h) recommendations 34 to 36 on training for Presiding Officers and Tribunal staff; and
- (i) recommendation 37 on relocation of the Tribunal. The Judiciary had already obtained the necessary provisions to effect the relocation.

Action

- JA 4. To facilitate the Panels' consideration, the Chairman requested JA to provide in writing the progress of the implementation of the Working Party's recommendations.
5. On implementation of improvement measures, Permanent Secretary for Economic Development and Labour (Labour) (PS(EDL)(L)) informed members that a new form in place of the existing claim forms would be put to use on 22 November 2004. The new form would contain common background information required by the Labour Department (LD) and the Tribunal. With the use of the new form, it was no longer necessary for claimants to repeat at the Tribunal the background information already supplied to LD. He undertook to provide a copy of the new form for members' reference.
- Adm 6. PS(EDL)(L) updated members on the work of the Labour Relations Division (LRD) as follows –
- (a) LRD handled about 34,000 cases in 2003, representing a reduction of 3% compared with 2002. For the period from January to October 2004, cases dealt with (about 24,000) had dropped by 16% when compared with the corresponding period in 2003;
  - (b) the settlement rate of conciliation in 2003 was 65.1%, compared with 63.2% in 2002. The rate rose further to 67.5% for the first 10 months in 2004. During that period, about 6,300 unsettled cases were referred to the Tribunal, compared with 8,600 cases in the corresponding period in 2003. The improved rate of settlement had eased the pressure on the Tribunal in terms of cases referred to it for adjudication; and
  - (c) LRD had a performance pledge of a five-week waiting period for the convening of a conciliation meeting after a claim had been lodged with the Division. The waiting period was shortened from 4.7 weeks in 2002 to 4.1 weeks in 2003, and further reduced to 3.4 weeks during the period from January to October 2004.
- Adm 7. The Chairman requested PS(EDL)(L) to advise in writing on –
- (a) an update on cases handled by LRD and cases settled through the Division vis-à-vis cases referred to the Tribunal; and
  - (b) the Administration's position on the Working Party's recommendations involving proposed policy/legislative changes.

Issues raised by members

*Attempts at settlement by the Tribunal*

8. Ms LI Fung-ying noted that the Working Party had recommended, inter alia, that after a claim was filed in the Tribunal, except in those cases where the parties had

Action

not previously sought the assistance of the LRD, there should only be one attempt by the Tribunal at settlement at the call-over hearings (recommendation 5 of the Report). Ms LI pointed out that the general opinion of claimants was that too many attempts at settlement would delay the adjudication process. Where conciliation in LRD failed and the claim was referred to the Tribunal, the Tribunal should proceed with adjudication right away without further attempt to settle. She questioned the need for one more attempt at settlement in the Tribunal as recommended by the Working Party.

9. JA replied that the Tribunal was required to carry out thorough investigation and attempt to settle an employment dispute after the case was brought to it. In conducting settlement, the Presiding Officers (POs) who had legal training and experience, and the Settlement Tribunal Officers (TOs) where appropriate, would assist the parties in getting a better understanding of the issues and the evidence involved. They would also advise the parties on the possible consequences of continuing the litigation. This would greatly assist the parties in making an informed decision as to how to pursue their case. Past experience had shown that the chance of achieving settlement in the Tribunal was high. JA added that the Working Party, in making the recommendation, had drawn on the practice and experience of disputes resolving bodies in some overseas jurisdictions.

10. Ms Miriam LAU said that she had heard opinions from the labour sector which do not support the Tribunal conducting attempts at settlement. In her view, conciliation, with all the clear advantages of resolving conflict through consensus and compromise of the parties concerned, was a prevailing trend worldwide as a means for dispute settlement. She considered that a balanced approach should be adopted in addressing the concern about attempts at settlement in the Tribunal. She added that more intensive training to enhance the conciliation skills of POs and TOs should be provided so as to increase the effectiveness of conciliation, thereby making the attempts at settlement more acceptable to the parties.

11. JA said that the Judiciary was well aware of the importance of training for the Judiciary staff. He said that the Judicial Studies Board and the Judiciary Administration were organizing relevant skills training courses for POs and TOs respectively on a continuous basis.

*Time limit for hearing*

12. Mr WONG Kwok-hing noted that the Working Party had recommended that section 13(1) of the Labour Tribunal Ordinance (LTO) should be amended to provide that a claim should be fixed for hearing not earlier than 20 days and not later than 45 days from the filing of the claim, unless the parties agreed or the PO directed otherwise (recommendation 15 of the Report). He pointed out that the existing requirement under section 13(1) of LTO was that a claim should be listed for a first hearing on a date not earlier than 10 days and not later than 30 days from the filing of the claim. He considered that to enhance the operation of the Tribunal, the time limit provided in section 13(1) of LTO should be shortened, instead of being lengthened.

Action

13. JA said that the Working Party had found that the causes for concern about the Tribunal process were largely inter-related and required to be approached on that basis. The recommendations made by the Working Party, while suggesting specific improvements to some aspects of the Tribunal process, were intended to be taken as one whole package aiming at an overall enhancement of the process.

14. JA further said that the Working Party had found that to enhance the effectiveness and efficacy of the adjudication process, the parties to a claim should have the opportunity to make full preparation for their cases before the first hearing. This included the gathering of necessary evidence and obtaining statements and information from witnesses etc. Cases which were well prepared for the first hearing could expedite the overall trial process, while poorly prepared cases often led to unnecessary adjournments and delays. The present time limit also created constraints for the TOs to carry out the necessary inquiry and investigation and prepare the report on the case. In the view of the Working Party, the time limit prescribed under section 13(1) of LTO was unrealistic by reference to the actual operation in the Tribunal and what was generally required to enable a claim to be properly prepared for the first hearing.

15. Mr WONG Kwok-hing remarked that he could not accept the Working Party's recommendation. He said that the Tribunal was established with the objective of providing a quick, simple, cheap and informal forum for resolving employment disputes. With the Tribunal in operation for over 30 years, the Working Party's recommendation represented a retrogressive step in increasing the efficiency and efficacy of the Tribunal.

16. Mr LEE Cheuk-yan said that he doubted whether the Working Party's recommendation concerning the time limit for the first hearing of the Tribunal could in practice expedite the overall adjudication process, taking into consideration the Working Party's other recommendations such as the retention of the Tribunal's practice to attempt settlement before trial even though LRD had already attempted conciliation, and the retention of pre-trial mention hearings. He considered that unless there was a requirement which prescribed that a claim should be finally concluded within a certain maximum period, the adjudication process could be prolonged as a result of the Working Party's recommendation.

17. JA responded that the Working Party believed that the implementation of its recommendations as a package could enhance the overall efficiency of the Tribunal. Whether or not the target could be achieved would have to be further examined in the light of operational experience after implementation. He added that the legislative amendments to implement specific recommendations of the Working Party would be submitted to the Panel in due course.

18. Mr WONG Kwok-hing referred members to the written submission made by the Hong Kong Federation of Trade Unions (FTU) (LC Paper No. CB(2)175/04-05(01)), which mentioned that in the Mainland an adjudicating body for a claim would be formed within seven days after the filing of the claim. The body

Action

was required to conclude the case within 60 days, with an extended period of 30 days if the case was a complicated one. The total time taken from filing of claim to conclusion was much shorter than the average time for disposal of adjudicated claims by the Labour Tribunal, i.e. 164 days as shown in Appendix V(k) of the Working Party's Report.

19. JA explained that the period of 164 days as stated in Appendix V(k) of the Report referred to the average time taken for disposal of the more complex cases where mention hearings were held. These cases only accounted for about 26% of the total claims. The average time taken for disposal of adjudicated claims that did not undergo mention hearing was only 45 days.

20. Referring to Appendix V(i) of the Report, Mr LEE Cheuk-yan said that out of 3,659 cases adjudicated in 2003, 1,746 cases were ex-parte claims. These were simple cases which could be concluded quickly. There were 1,617 cases heard with all parties present. He said that the time taken for concluding cases with all parties present still remained a matter of serious concern.

21. In response to Ms Emily LAU's enquiry, JA said that the Tribunal had 12 courts and hence a total of 12 POs. Since 1973, the Tribunal had experienced a 12-fold increase in caseload and the number of Tribunal staff had multiplied six times. With the introduction of information technology to facilitate work processes and other measures to enhance efficiency generally, there was presently no shortage of Tribunal staff which might result in delay in hearing and determining cases.

JA

22. Regarding cases which took seven months or more (from date of filing of claim) for conclusion, JA advised that they were the relatively more complicated cases. He agreed to provide an analysis on the Tribunal process and procedures which such cases had gone through for members' information.

*Enforcement of Tribunal award*

23. Ms LI Fung-ying pointed out that there were many cases where the employers had agreed to pay the awards by instalments but defaulted after making partial payments. She opined that new measures should be introduced to improve the existing mechanism for enforcement of awards to help workers in cases where the employers had evaded payment.

24. Echoing Ms LI's concern, Mr LEE Cheuk-yan said that he had handled insolvency cases in which the employees were referred to LD for assistance under the Protection of Wages on Insolvency Fund. However, for various reasons such as the lack of sufficient information or evidence to support the agreed terms of settlement between both parties and the partial payments which the employers had made, the employees were not able to receive the full protection provided under the Fund.

Action

25. Mr LEE Cheuk-yan added that presently, a party had to go first to the Tribunal and then to the District Court to apply for execution by the bailiff. The need to pay a deposit for the use of the bailiff's service had posed hardship to the claimants. The parties' frustration was compounded by the fact that the execution turned out to be futile. Mr LEE said that he was disappointed at the Working Party's proposal to defer addressing the matter to an overall review of enforcement of judgments generally, the timeframe for which was as yet unknown.

26. Echoing Mr LEE's views, Mr Andrew CHENG said that the Working Party had not given any assurance that the overall review would be carried out. He opined that as the objective and operation of the Tribunal were essentially different from that of the other levels of court in many respects, a review for the effective enforcement of the Tribunal's awards should be taken forward early and separately, not to await an overall general review of enforcement of court judgments. Mr CHENG further pointed out that at the meeting of the Panels on 24 May 2004, members had called upon the Administration to take into account the practices adopted in other jurisdictions such as New Zealand and the United Kingdom, in considering introducing measures to improve the mechanism for enforcement of awards.

27. Mr LEE Cheuk-yan suggested that the following measures should be considered –

- (a) in relation to cases involving arrears of wages with prima facie evidence to establish the claims, the PO should have the power to order security if he was satisfied that the employer was guilty of deliberately delaying the payment; and
- (b) the costs of execution of awards should be borne by the employers in default payment cases.

Mr Andrew CHENG supported Mr LEE Cheuk-yan's proposals.

28. Ms Miriam LAU said that she had heard of many complaints against unscrupulous employers. She cautioned that the situation should not be generalized. She said that not all employers involved in employment disputes were at fault. Many employers were not well-off, and they faced genuine problems and difficulties in keeping their business going. She opined that the proposal on order of security should be considered with care and with a balanced view.

JA

29. Mr Andrew CHENG requested the Judiciary Administration to provide an update on the effective rate of bailiffs in execution of the Tribunal's awards in cases where the employers had defaulted payments.

*Costs on appeal*

30. Ms LI Fung-ying said that trade unions were seriously concerned that the high costs on appeals from the Tribunal had deterred employees from pursuing their case.



Action

She queried why the Working Party did not support the proposal to cap or limit the costs on appeal borne by the losing party (recommendation 30 of the Report).

31. JA responded that the Working Party's position was explained in detail in paragraph 5.127 of the Report. The Working Party considered that there were no compelling reasons why the parties to Tribunal appeals should not be subject to the same costs risks as litigants in other civil appeals. The matter was not one of wealthy litigants using the threat of disproportionate costs on appeal to crush their opponents regardless of the merits of the case. The Working Party had also pointed out that leave to appeal would only be granted in accordance with the strict criteria laid down in the statute, and the appellate procedure could not be invoked lightly.

*Jurisdiction of the Tribunal to deal with both liquidated and unliquidated claims*

32. Mr KWONG Chi-kin referred members to FTU's submission. He said that FTU did not support the Working Party's recommendation to amend the Schedule to LTO to put it beyond doubt that the Tribunal had jurisdiction to deal with both liquidated and unliquidated claims (Recommendation 1 of the Report). In the views of FTU, the jurisdiction of the Tribunal should not extend to claims for unliquidated damages as this could result in a vast increase in the number of complicated cases being lodged with the Tribunal, which should more appropriately be heard in the District Court or the High Court with the assistance of legal representation of the parties. The recommendation of the Working Party deviated from the intended objective of the Tribunal as a simple and informal forum for resolving employment claims, which largely involved statutory compensation prescribed under the Employment Ordinance. FTU was also concerned that the employers being the defendants would be tempted to make counter-claims against the employees if the jurisdiction of the Tribunal was so extended. Mr KWONG added that in his knowledge, the Tribunal normally would not deal with claims involving unliquidated damages.

33. JA replied that the Working Party was aware that LTO was not clear in defining claims which fell within the jurisdiction of the Tribunal, giving rise to different interpretations as to whether the jurisdiction should also cover claims for unliquidated damages. The Working Party had pointed out that there were two different lines of judicial authorities on the scope of the Tribunal's jurisdiction, originated from decisions of the Court of First Instance on appeals from the Tribunal. While both lines of authorities were binding on the Tribunal, the POs in practice usually followed the line that a claim for "a sum of money" referred to in paragraph 1 of the Schedule to LTO could extend to damages unliquidated in law but quantified in practice, and the Tribunal had jurisdiction to deal with such claims. Recommendation 1 of the Working Party's report was intended to put that beyond doubt.

JA

34. The Chairman requested the Judiciary Administration to provide for the Panels' reference the court judgments mentioned in paragraphs 5.6 to 5.8 of the Working Party's Report which represented the two lines of judicial authorities.

Action

35. Mr KWONG Chi-kin considered that the amendment proposed by the Working Party would work to the disadvantage of the employees and it should be reconsidered in the context of the objective of establishing the Tribunal.

*Review matters involving policy considerations*

36. Mr Alan LEONG opined that while the Working Party had made recommendations to improve the operation of the Tribunal from the Judiciary's standpoint, the matter should also be approached from the perspective of policy. He said that the Administration should examine the possibility of introducing more proactive measures, some of which might involve a review of policy, in order to achieve a major breakthrough. He made the following suggestions –

- (a) inquiry and investigation into claims should be carried out by LD and the Tribunal should be mainly responsible for adjudication. This would reduce the waiting time for hearing and conclusion of claims;
- (b) as most of the cases handled by the Tribunal did not involve enormous sums, the employers as the respondents should be required to make payment for security before adjudication where the PO considered appropriate; and
- (c) subject to certain conditions, e.g. with the consent of the parties concerned, certain cases could be concluded in one trial without an appeal.

37. Ms Miriam LAU expressed support for proposal (c) above as it could achieve early and final conclusion of cases brought in the Tribunal.

38. Mr LAU Chin-shek said that at the end of the day, the efficiency and efficacy of the existing system were measured by the expediency with which claims were settled and whether the claimants could receive the awards. He opined that the mode of operation of the Tribunal was moving more and more towards that of a formal court, which had turned away from the principle of establishing the Tribunal 30 years ago as an effective mechanism to settle employment disputes in a quick and informal manner. He added that employment disputes differed from other civil litigation in that they involved claims for statutory benefits which were clearly provided under the law. He shared the view that a review of the existing system for resolving employment disputes should be conducted separately from an overall review of civil claims to assess whether it was moving in the right policy direction.

39. The Chairman pointed out that in two recent Court of Appeal judgments, it was held that the meaning of courts under Article 35 of the Basic Law included tribunals. Since litigants should have the right to legal representation in courts, the Chairman requested the Administration to consider whether the existing prohibition against legal representation in proceedings of the Labour Tribunal proceedings had violated such right.

Action

40. Ms Miriam LAU pointed out that presently self-employed people such as independent small contractors did not come under the protection of the existing regime of settlement of employment disputes. She suggested that the need to afford protection to these people should be considered, for example, to allow them to file claims with the Tribunal provided that the amount claimed did not exceed an upper limit.

41. The Chairman pointed out that the terms of reference of the Working Party, whose members comprised judges and judicial officers, were limited to reviewing the operation of the Tribunal and recommending improvements thereto. Proposals on improvement measures involving policy considerations would fall outside the Working Party's authority and they should be considered and pursued by the Administration.

Adm/  
JA

42. The Chairman requested the Administration and the Judiciary Administration to consider the views expressed by members and follow up the issues raised.

*(Post-meeting note : The responses of the Judiciary Administration and the Administration to the issues raised by members in paragraphs 4, 5, 7(a), 22, 29, and 34 above were issued to the Panels vide LC Paper Nos. CB(2)285/04-05(01) to (03) on 26 November 2004.)*

Meeting with deputations

43. Members agreed that the Panels should hold a joint meeting on 2 December 2004 to receive views from deputations on the Working Party's Report and to discuss with the Administration on relevant issues.

*(Post-meeting note: The meeting was subsequently re-scheduled for 13 December 2004)*

44. Members agreed that organizations which had previously been invited to give views on the operation of the Labour Tribunal should be invited again to make written submissions on the Working Party's Report and to exchange views with the Panels at the next meeting. The Chairman said that members who would like to suggest other organizations to be invited to give views should advise the Clerk accordingly.

*(Post-meeting note : Members were invited to make suggestions to the Clerk vide LC Paper No. CB(2)197/04-05 issued on 11 November 2004.)*

45. The meeting ended at 6:50 pm.