

立法會

Legislative Council

LC Paper No. CB(2)140/04-05

Operation of the Labour Tribunal

The operation of the Labour Tribunal was discussed by the two Panels at three joint meetings in the last session –

- (a) meeting on 6 May 2003 to receive views and comments from deputations on the operation of the Labour Tribunal and measures to improve the services provided by the Tribunal;
- (b) meeting on 19 June 2003 to continue discussion on introducing improvement measures to enhance the operation of the Labour Tribunal; and
- (c) meeting on 24 May 2004 to consider the Research Report on “The Operation of Labour Tribunals and Other Mechanisms for Resolving Labour Disputes in Hong Kong and Selected Places” prepared by the Research and Library Services Division of the LegCo Secretariat.

The minutes of the above three joint meetings are attached in **Appendices I, II and III**. The Research Report is available on the LegCo website (<http://www.legco.hk>) (Library and Research Papers).

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Legislative Council

LC Paper No. CB(2)2533/02-03

(These minutes have been
seen by the Administration)

Ref : CB2/PL/AJLS+MP

Panels on Administration of Justice and Legal Services and Manpower

**Minutes of joint meeting
held on Tuesday, 6 May 2003 at 4:30 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 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 Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP

Members of Panel on Manpower

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

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

Hon CHAN Kam-lam, JP
Hon Miriam LAU Kin-yee, JP
Hon TAM Yiu-chung, GBS, JP

Members of Panel on Manpower

Dr Hon LUI Ming-wah, JP
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon Michael MAK Kwok-fung
Hon Frederick FUNG Kin-kee

* Also a member of Panel on Manpower

Public officers attending : Item II

Mr Wilfred TSUI
Judiciary Administrator

Mr Augustine L S CHENG
Deputy Judiciary Administrator (Operations)

Mr LAM Chui-kok
Acting Registrar, Labour Tribunal

Attendance by invitation : Hong Kong & Kowloon Trades Union Council

Mr LEE Kwok-keung
Chairman

Mr LAW Tai-chi
Committee Member

The Hong Kong Federation of Trade Unions

Mr FUNG Kin-cho
Secretary
Hong Kong Construction Industry Employees
General Unions

Mr IP Wai-ming
Executive Secretary
The Hong Kong Federation of Trade Unions

The Federation of HK & Kowloon Labour Unions

Ms NG Wai-yee
Director of Labour Rights

Mr WAN Sung-kwong
Deputy Director of Labour Rights

Hong Kong Confederation of Trade Unions

Ms CHEUNG Lai-ha
Vice-Chairperson

Mr CHAN King-chi
Organizing Secretary

Neighbourhood and Worker's Service Centre

Mr SETO Chun-pong

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

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

Mr Paul WOO
Senior Assistant Secretary (2)3

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I. Election of Chairman

Miss Margaret NG was elected Chairman of the joint meeting.

II. Operation of the Labour Tribunal

(LC Paper Nos. CB(2)1932/02-03(01); 1931/02-03(01) to (03); 1940/02-03(01) & (02); and 1977/02-03(01))

2. The Chairman welcomed the deputations to attend the meeting. At the invitation of the Chairman, the deputations made verbal representations on

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their submissions on the operation of the Labour Tribunal (LT). A summary of the views of the deputations is at **Annex**.

3. The Chairman invited questions from members and the Judiciary Administrator (JA) to respond.

Waiting times

4. In reply to members, JA advised that in 2000, LT had set a target of 30 days for the period from the date of appointment to the date of filing a claim with the Tribunal. Since then, the waiting period was shortened considerably. He added that for the 12 000 cases filed with LT in 2002, the average period required from appointment to filing of the case was 12 days, and that from filing of the case to callover hearing was 24 days. For the relatively more complex cases which needed to proceed to trial, the average period taken from appointment to conclusion of the case was 56 days. For the most complicated cases, the average period was 128 days. JA further said that for cases which had proceeded to the trial stage, in average, 2.1 hearings were required for such cases to be concluded.

5. Mr LEE Cheuk-yan said that the average figures provided by JA above did not accurately reflect the extent of the problem of long waiting time. He suggested that the Judiciary should categorise the cases handled by LT according to -

- (a) the actual time taken (breakdown in months) for the cases to be finally disposed of; and
- (b) the actual number of trials required for the cases to be concluded.

Adm Mr LEE Cheuk-yan requested the Judiciary Administration to provide the breakdown of the cases for members' reference.

Adm 6. Mr Martin LEE also requested the Judiciary Administration to provide the 10 worst cases in the past three years in terms of the length of time taken for such cases to be finally disposed of.

7. Ms Emily LAU pointed out that the Legislative Council Public Accounts Committee (PAC), in considering the Director of Audit's Report No. 34 published in February 2000, had commented on the practice adopted by LT of recording the cases initially in an appointment register. Under such practice, cases entered in the register were not considered as having been formally filed in accordance with the Labour Tribunal Ordinance. When the Registrar of LT found available time slots within the following 30 days for hearing the cases, he would then ask the claimants to complete the formality for filing of their cases in the Tribunal. As noted by the Director of Audit and

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PAC, the use of the appointment register ensured that all cases would meet the statutory requirement that LT should hear a claim not later than 30 days from the date of filing of claim. In its report published in June 2000, PAC had criticised the use of the appointment register as a means to circumvent the 30-day time limit.

8. JA responded that he had previously explained to PAC that the use of the appointment register provided a mechanism for assisting claimants in filing their claims at the earliest opportunity, and facilitated mobilisation of judicial resources to cope with any sudden increase in caseload of LT. The Judiciary considered that there was a practical need to continue the arrangement.

9. Ms Emily LAU opined that the correct approach to solve the problem of backlog and long waiting time was to provide additional resources to LT and increase the number of courts, where appropriate, to handle the caseload.

10. Ms LI Fung-ying expressed concern that the anticipated increase in the caseload of LT would worsen the situation of long waiting times. JA said that the Chief Justice (CJ) had explained that the Judiciary, same as other executive departments, was subject to the existing financial constraints. However, CJ had assured that regardless of the impact, the quality of justice would not be sacrificed. JA further said that the increase in caseload might create pressure on LT's resources, particularly on the services provided by the supporting staff. Nevertheless, the Judiciary would make its best efforts to minimise the impact on waiting times through identifying opportunities to improve efficiency, e.g. flexible deployment of judicial resources and support staff.

Role of Presiding Officers (POs) and Tribunal Officers (TOs)

11. Referring to the views expressed by the depositions that POs and TOs of LT often pressurised the parties to come to a settlement instead of conducting adjudication on the case, JA said that this was far from the truth. He said that as LT was required by law to operate in an informal and inquisitorial procedure, and the parties were not legally represented in the proceedings, PO was duty bound to explain the law, the procedure and evidence and the issues involved to the parties concerned to help them understand the nature of their dispute. PO would also have to make the parties aware of the possible consequences of continuing the litigation, and the time and cost implications of appeals. In the course of so doing, the impression might be wrongly perceived by the parties that PO was trying to compel the parties into a settlement.

12. Mr LEUNG Fu-wah said that when getting both parties to come to an agreement, POs should act cautiously to avoid the perception that they were compelling the parties to settle their case against their wish. Mr Albert HO added that POs should be mindful of their behaviour and attitude in handling the cases. He said that if they spoke to the litigants in an outrageous or

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unsympathetic manner, this could easily give rise to the perception that they were biased against or acting in favour of certain parties, particularly where the litigants did not have the benefit of legal representation.

13. JA assured members that POs fully appreciated that their duty was to dispose of a claim in the interest of justice.

14. In reply to members' enquiry about the role played by TOs in conciliation, JA explained that TOs had a duty under the law to assist parties to arrive at an amicable settlement where appropriate. The Labour Tribunal Ordinance provided that TOs should conduct conciliation with a view to achieving settlement of a claim. Under section 15(1) of the Ordinance, the Tribunal should not hear a claim until a certificate signed by a TO or an authorised officer was filed or produced to the effect that -

- (a) one or more of the parties had refused to take part in conciliation;
- (b) conciliation had been attempted but no settlement had been reached;
- (c) conciliation was unlikely to result in a settlement being reached;
or
- (d) conciliation might prejudice the interests of a party.

15. Ms Audrey EU opined that where an attempt of TO to conciliate had failed and the case had to proceed to trial, PO should conduct adjudication rather than engaging in further conciliation.

16. Ms Audrey EU further enquired whether interviews conducted by TOs could be audio-recorded. JA replied that as TOs handled a large number of interviews on a daily basis, there would be significant resource implications if the interviews were to be recorded. He further said that complaints against TOs were rare. He pointed out that in 2002, with 12 000 cases handled by LT, 17 complaints against TOs were received. On the other hand, 45 letters of commendation were received. JA opined that he saw no immediate need for recording the interviews conducted by TOs.

17. Mr LEUNG Fu-wah suggested that more intensified training and refresher courses should be provided to POs and TOs to enable them to acquire better knowledge and understanding of the law and labour relations matters.

Complaints mechanism

18. On members' enquiry about the channel for complaint against POs and TOs, JA advised that complaints against POs could be directed to the Chief

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Magistrate for necessary action, while complaints against TOs or other staff members of LT could be channelled through him or other senior members of the Judiciary Administration. He further advised members that the Judiciary had prepared an information leaflet on the mechanism for handling complaints against judges and judicial officers and the proper channels for lodging complaints. The leaflet would be made available to the public in about two weeks' time.

19. Ms Emily LAU said that she was concerned about allegations that judgments delivered by LT were biased in favour of the employers, particularly the big enterprises. She said that these allegations were signs of doubt that the existing judicial system could not uphold fairness and justice. She opined that the Judiciary should treat the matter seriously.

Arrangements for callover hearings and filing of claims

20. Referring to the existing arrangement under which different parties were required to report to LT at 9:30 am for purposes of attending callover hearings and filing of claims, Ms Audrey EU and Mr LEUNG Fu-wah opined that the Judiciary should arrange different time slots for dealing with such matters so that the parties would not have to wait for a long time before their cases were attended to.

21. JA explained that depending on the nature of individual cases, some callover hearings or filing of claims might be finished within a short time. Hence, the existing practice of inviting the parties to report to the Tribunal at the same time early in the morning was to minimise idle time and achieve maximum use of judicial resources. JA noted the proposal to schedule the appointments at different time slots and undertook to review the present arrangement.

Adm

Pre-trial mention

22. In response to Mr LEE Cheuk-yan, JA said that PO, after making enquiries at the callover hearing as to the readiness of the claim to proceed to trial, might set down the matter for trial in a trial court right away if the case was simple. However, if the matter was not straightforward and required the parties to provide more evidence, PO would set it down for pre-trial mention. JA explained that the purpose of pre-trial mention was to examine any further evidence or documents to decide whether the matter was ready to proceed to the trial stage. As certain legal issues and matters relating to evidence could be sorted out in pre-trial mention, the trial proceedings could be expedited.

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Standardisation of forms and transmission of information between the Labour Department (LD) and LT

Adm 23. In response to the views expressed by the deputations, JA said that the Judiciary would discuss with LD on measures to facilitate efficient transmission of information and documents between LD and LT, hence relieving the claimants from having to provide duplicated information and documents to both LD and LT. He added that the possibility of standardising forms used by LD and LT and transmission of information through electronic means would be considered.

Night courts

Adm 24. Ms Audrey EU opined that although night sittings of LT had been suspended with effect from February 2003, the Judiciary should review the need for resuming the night courts as proposed by the deputations.

Safeguard against witnesses collaborating in giving evidence

Adm 25. Mr LEUNG Fu-wah and Ms Audrey EU supported a deputation's proposal that to minimise the chance of witnesses informing each other in the course of the proceedings, witnesses should not be allowed to sit in the courtroom when the proceedings were in progress. The Chairman said that the Judiciary might consider promulgating rules to put this into practice.

Costs

26. Mr Albert HO asked how costs awarded by LT were taxed. JA advised that under section 28 of the Labour Tribunal Ordinance, the Tribunal might award costs and expenses to a party which might include -

- (a) any reasonable expense necessarily incurred and any loss of salary or wages suffered by that party; and
- (b) any reasonable sum paid to a witness for the expenses necessarily incurred and any loss of salary or wages suffered by him,

in attending a hearing of the Tribunal or in being interviewed by a TO.

Adm 27. Mr Albert HO expressed concern that the method of calculation of costs created tremendous financial burden on the employees. He opined that the possibility of amending the law, e.g. to cap the maximum limit of costs payable by the employees, should be considered.

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Offset of severance payment and long service payment against retirement scheme/mandatory provident fund scheme benefits

28. JA explained that the statutory provisions relating to the above matters were laid down in sections 31I, 31IA, 31Y and 31YAA of the Employment Ordinance. In adjudicating claims relating to such matters, the Tribunal had to act according to the statutory requirements and would therefore request the claimants to provide the relevant records for verification.

The way forward

29. The Chairman requested the Administration to respond to the views and suggestions of the deputations and the issues raised by members. Members agreed that another joint meeting should be held to continue discussion on the subject matter with a view to identifying relevant issues for the purpose of a comprehensive review of the operation of the Labour Tribunal.

30. Mr Kenneth TING Woo-shou suggested that representatives from the Administration responsible for labour issues and major business/employers' associations should also be invited to attend the next joint meeting.

(Post-meeting note - With the agreement of the two Panel Chairmen, the next joint meeting was scheduled for 19 June 2003 at 10:45 am.)

31. The meeting ended at 6:50 pm.

Council Business Division 2
Legislative Council Secretariat
18 June 2003

**Joint meeting of Panel on Administration of Justice and Legal Services and
Panel on Manpower on 6 May 2003**

**Summary of views expressed by deputations on
Operation of the Labour Tribunal**

Organisations (Paper No. of submission)	Views and suggestions
(1) Waiting times	
Hong Kong and Kowloon Trades Union Council (<i>LC Paper No. CB(2)1931/02-03(01)</i>)	- The law should be amended to provide that cases should be disposed of by the Labour Tribunal (LT) within two months after filing of claim.
The Hong Kong Federation of Trade Unions (<i>LC Paper No. CB(2)1940/02-03(01)</i>)	- Cases should be disposed of within three months from date of filing of claim. To achieve this end, the manpower resources of LT should be increased.
The Federation of Hong Kong & Kowloon Labour Unions (<i>LC Paper No. CB(2)1931/02-03(02)</i>)	- The period from date of filing of claim to hearing should not exceed three weeks.
Hong Kong Confederation of Trade Unions (<i>LC Paper No. CB(2)1931/02-03(03)</i>)	- The claimants were very often forced to enter into agreement with their employers or withdraw their claims because of the long period of time required for the case to proceed to trial. - The number of Presiding Officers (POs) and Tribunal Officers (TOs) should be increased. Cases should be disposed of within two months.

(2) Handling of cases by POs and TOs	
Hong Kong and Kowloon Trades Union Council	<ul style="list-style-type: none">- POs and TOs should not duplicate the work of conciliation which was performed by the Labour Department (LD); and- As the claimants were not legally represented, they were prone to being influenced by POs in reaching agreement with the employers, or withdrawing their claims, without fully knowing their statutory rights and entitlements.
The Hong Kong Federation of Trade Unions	<ul style="list-style-type: none">- Over-emphasis on conciliation had resulted in delay in adjudication and disposal of cases by LT; and- The manner and attitude of POs and TOs towards the claimants should be improved.
The Federation of Hong Kong & Kowloon Labour Unions	<ul style="list-style-type: none">- Settlement by conciliation usually resulted in the claimants not getting their full entitlement to the compensation. POs and TOs should be constantly reminded of their duty to handle cases fairly and impartially.
Hong Kong Confederation of Trade Unions	<ul style="list-style-type: none">- POs often resorted to conciliation and compelled claimants to agree on settlement terms which were less favourable than their legal entitlements;- POs were biased in favour of the employers, especially the big enterprises; and- The arrangement for engaging different POs to handle the same case at different stages of trial created confusion to the claimants.
Neighbourhood and Worker's Service Centre (<i>LC Paper No. CB(2)1940/02-03(02)</i>)	<ul style="list-style-type: none">- The claimants were forced to compromise on their claims in the course of conciliation. In the absence of proper legal advice on their rights and entitlements, their interests were prejudiced; and

	- TOs had failed to provide sufficient assistance to claimants, e.g. in preparing evidence and statement of claims.
(3) Complaints mechanism	
Hong Kong Confederation of Trade Unions	- A complaints mechanism involving the participation of trade unions should be established to deal with complaints against POs and TOs.
(4) Callover hearings and filing of claims	
Hong Kong Confederation of Trade Unions	- The existing practice of inviting different claimants to report to LT at the same time in the morning for callover hearings or filing of claims created inconvenience to the claimants. It was suggested that different time slots should be arranged for dealing with such matters.
Neighbourhood and Worker's Service Centre	- The existing arrangement for claimants to report to LT at the same time in the morning should be improved as some claimants had to wait for a long time before their cases were attended to. To reduce inconvenience, the claimants should be advised to turn up according to a time schedule specifying the appointments.
(5) Standardisation of forms and efficient transmission of information between LD and LT	
Hong Kong & Kowloon Trades Union Council	- Forms containing information used by LD and LT should be standardised; and - Measures should be introduced to facilitate efficient transmission of information between LD and LT.
The Hong Kong Federation of Trade Unions	- Provision of duplicated documents and information to LD and LT should be avoided to save time of the claimants; and

	- Measures should be introduced to facilitate efficient transmission of information between LD and LT.
The Federation of Hong Kong & Kowloon Labour Unions	- Provision of duplicated documents and information to LD and LT should be avoided.
(6) Day courts	
The Federation of Hong Kong & Kowloon Labour Unions	- All the 13 day courts should preferably be situated in the same location.
(7) Night courts	
The Federation of Hong Kong & Kowloon Labour Unions	- The effectiveness of night courts was limited in view of the short operating hours.
Neighbourhood and Worker's Service Centre	- The night courts should be resumed.
(8) Costs	
Hong Kong and Kowloon Trades Union Council	- Employees who were successful in pursuing their claims should be awarded costs.
The Hong Kong Federation of Trade Unions	- Pursuing claims at LT was costly to the employees, in terms of the time spent and loss of wages which might result. The costs which a claimant might be awarded were far from enough to compensate for the losses incurred.
(9) Others	
Hong Kong and Kowloon Trades Union Council	- Two deputy POs, one nominated by employers' associations and one nominated by trade unions, should assist the PO in the trial;

	<ul style="list-style-type: none">- Duty lawyers and trade union representatives should be present at LT to provide assistance and free legal advice to the claimants; and- The penalty imposed on employers who defaulted payments to the employees should be increased.
The Hong Kong Federation of Trade Unions	<ul style="list-style-type: none">- Heavy penalty should be imposed on employers who repeatedly failed to provide documentary evidence without reasonable excuse; and- Training of staff members of LT should be strengthened.
The Federation of Hong Kong & Kowloon Labour Unions	<ul style="list-style-type: none">- The financial jurisdictional limit of the Minor Employment Claims Adjudication Board of LD should be increased to \$10,000 or \$15,000. This would relieve part of the workload of LT;- The jurisdiction of LT should be extended to cover cases relating to mandatory provident fund benefits; and- There should be regular opportunities for exchange of views between LT and trade unions on labour matters and issues relating to the operation of LT.
Hong Kong Confederation of Trade Unions	<ul style="list-style-type: none">- In cases where the employer appealed to a higher court from the decision of LT, the employee could apply for legal aid and the means test for legal aid should be waived in respect of the application;- At present, workers involved in claims for severance payment or long service payment had to spend considerable time and effort in getting the record of their provident fund benefits and to produce the record to LT for verification. Assistance should be provided to the workers in obtaining such records; and

	<ul style="list-style-type: none">- Training of POs and TOs should be strengthened.
Neighbourhood and Worker's Service Centre	<ul style="list-style-type: none">- Witnesses should not be allowed to stay inside the courtroom to observe the process of proceedings; and- Enhanced statutory power should be provided to LT to enforce its awards in the event of employers defaulting payment.

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Legislative Council

LC Paper No. CB(2)3038/02-03

(These minutes have been seen
by the Administration)

Ref : CB2/PL/AJLS+MP

Panels on Administration of Justice and Legal Services and Manpower

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

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

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

Members of Panel on Manpower

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

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

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

Members of Panel on Manpower

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

* Also a member of Panel on Manpower

Public Officers : Item III
attending

Economic Development and Labour Bureau

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

Labour Department

Mrs Jennie CHOR
Assistant Commissioner for Labour (Labour Relations)

Miss Bertha CHENG
Senior Labour Officer

Judiciary

Mr Wilfred TSUI
Judiciary Administrator

Mr Augustine L S CHENG
Deputy Judiciary Administrator (Operations)

Mr LAM Chui-kok
Acting Registrar, Labour Tribunal

Attendance by : Federation of Hong Kong Industries
invitation

Mr Clement CHEN
General Committee Member

Mr Roger TAM
Senior Administrative Officer

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

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

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I. Election of Chairman

Miss Margaret NG was elected Chairman of the joint meeting.

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

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

III. Operation of the Labour Tribunal

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

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

Consultation with employers' associations

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

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

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present views to the Panels on the subject matter-

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

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

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

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

Views of FHKI

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

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

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

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

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

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

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

Matters arising from the joint meeting on 6 May 2003

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

Waiting times

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

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Arrangements for callover hearings

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

Standardization of forms and transmission of information between LD and LT

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

Night courts

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

Safeguard against witnesses collaborating in giving evidence

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

Capping the maximum limit of costs payable by the employees

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

Issues raised by members

Waiting times

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

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

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

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

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

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

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

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

Conciliation undertaken by LD and LT

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

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

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

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

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Callover hearings and pre-trial mentions

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

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

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

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

Handling of cases by POs and TOs

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

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26. Mr LEUNG Yiu-chung said that more than half of the cases handled by LT had been disposed of by conciliation. He opined that to address the concern that POs and TOs had pressurized the parties to settle by conciliation, the Judiciary should conduct a study on such cases to analyse the factors accounting for the parties' willingness to settle the claims after the conciliation.

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

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

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

Complaints mechanism

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

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

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

Forms and documents used by LD and LT

33. In response to Mr LEUNG Fu-wah's question on the forms and documents prepared by LD in relation to referring unsettled claims to LT, PS

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for (EDL)(L) said that such papers included the claim form completed by the claimant when filing his claim at the LRD, the referral memorandum to LT, the relevant LT forms completed by the conciliation officer of LRD, and the documents provided by the parties during the process of conciliation. A list of such documents was set out in paragraph 8 of the paper provided by LD (LC Paper No. CB(2)2527/02-03(01)).

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

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

JA & Admin

Assistance rendered to employees in insolvencies or default payment cases

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

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

JA

38. Mr Andrew CHENG and Mr LAU Chin-shek said that in most cases, employees without legal aid could not afford the costs of instituting bankruptcy or winding-up petition against the employers. For cases where the value of the goods and chattels seized was insufficient to pay for the claims of the employees, the costs of instituting a petition would mean an additional loss to

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the employees. Mr CHENG and Mr LAU opined that new measures, including legislative means, should be implemented to improve the existing mechanism for assisting employees in insolvency cases.

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

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

The way forward

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

Review to be conducted by the Administration and the Judiciary

42. Members requested the Administration and the Judiciary to -

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

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

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

The Chairman also requested the Administration and the Judiciary to take into consideration the views expressed by members of the Panels and the

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JA & Admin deputations in conducting the review.

(Post-meeting note - (a) JA replied on 26 June 2003 that the Chief Justice (CJ) had decided to appoint a Working Party to review the operation of LT and to make improvements thereto. The Working Party aimed to submit a report to CJ by the end of 2003, and inform the Panels of the outcome of the review in early 2004. The letter from JA was circulated to members vide LC Paper No. CB(2)2694/02-03(01) on 27 June 2003; and (b) a letter dated 21 August 2003 from JA in response to the issues raised in paragraphs 37 and 42(a) above was circulated to members vide LC Paper No. CB(2)3025/02-03(01) on 28 August 2003.)

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

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

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

45. The meeting ended at 1:00 pm.

Council Business Division 2
Legislative Council Secretariat
4 September 2003

立法會
Legislative Council

LC Paper No. CB(2)3167/03-04
(These minutes have been seen
by the Administration)

Ref : CB2/PL/AJLS+MP

Panels on Administration of Justice and Legal Services and Manpower

**Minutes of joint meeting
held on Monday, 24 May 2004 at 4:30 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 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

Members of Panel on Manpower

Hon CHAN Kwok-keung, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon Andrew CHENG Kar-foo
Hon LEUNG Fu-wah, MH, JP

* also a member of Panel on Manpower

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

Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP

Members of Panel on Manpower

Hon LAU Chin-shek, JP (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon Cyd HO Sau-lan
Dr Hon LUI Ming-wah, JP
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon SZETO Wah
Hon LI Fung-ying, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon Frederick FUNG Kin-kee

**Public Officers :
attending**

Items II and III

The Administration

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

Mr Alan WONG
Assistant Commissioner for Labour (Labour Relations)
Labour Department

Miss Mabel LI
Senior Labour Officer
Labour Department

Judiciary Administration

Mr Wilfred TSUI
Judiciary Administrator

Mr Augustine L S CHENG
Deputy Judiciary Administrator (Operations)

**Clerk in
attendance**

: Mrs Percy MA
Chief Council Secretary (2)3

**Staff in
attendance**

: Mr Paul WOO
Senior Council Secretary (2)3

Mr Watson CHAN
Head, Research and Library Services Division

Miss Kitty LAM
Research Officer 8

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I. Election of Chairman

Miss Margaret NG was elected Chairman of the joint meeting.

II. Research Report on "The Operation of Labour Tribunals and Other Mechanisms for Resolving Labour Disputes in Hong Kong and Selected Places"

(RP06/03-04)

2. Head, Research and Library Services (H/RL) gave a power-point presentation on the Research Report prepared by the Research and Library Services Division (RLSD), which examined the mechanism for resolving labour disputes in Hong Kong, the United Kingdom (UK), New Zealand and Taiwan. He explained the following major attributes of the systems in the jurisdictions studied -

- (a) conciliation and measures to improve efficiency and effectiveness of the conciliation process;
- (b) hearing of labour disputes, including pre-trial hearings;
- (c) legal aid for labour dispute cases;
- (d) alternative methods for resolving disputes; and
- (e) enforcement of judgments.

3. Permanent Secretary for Economic Development and Labour (Labour) (PS(EDL)(L)) provided the following supplementary information in relation to conciliation undertaken by the Labour Relations Division (LRD) of the Labour Department -

success rate of conciliation

- (a) as explained in the Research Report prepared by RLSD, the settlement rate (68.5%) in New Zealand in 2002-03 included cases

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which were fully settled (45.4%) through the official mediator, as well as cases which were partially settled, settled by the parties themselves, or decided by the mediator (23.2%). Hong Kong's settlement rate in 2002 (63.2%) only covered cases which were fully settled by LRD. Therefore, if the same definition of settlement rate had been used for comparison, Hong Kong's settlement rate should have been higher than that of New Zealand; and

time needed to complete conciliation

- (b) LRD's performance pledge was to arrange a conciliation meeting within five weeks from the date a claim was lodged at LRD. At present, the average waiting time for a conciliation meeting at LRD offices was 3.7 weeks. Most of the cases, including settled cases concluded at LRD and unsettled cases referred to the Labour Tribunal (LT), required only one conciliation meeting.

III. Review on the operation of the Labour Tribunal

(LC Paper Nos. CB(2)2424/03-04(01) - (02); 1932/02-03(02); 2527/02-03(01) and 3025/02-03(01))

4. PS(EDL)(L) briefed members on the Administration's paper (LC Paper No. CB(2)2424/03-04(01)). The paper explained the measures to improve the mechanism adopted by the Labour Department in referring unsettled cases of labour disputes and claims to LT. It also contained some preliminary comments on the Research Report of RLSD. PS(EDL)(L) drew members' attention to the following major issues highlighted in the paper -

- (a) in 2003, LRD handled a total of 34 116 cases which represented a decrease of 3% over the historic high figure of 35 254 cases in 2002. In the first quarter of 2004, the number was 7 725, a decrease of 8% over the same period in 2003;
- (b) the settlement rate of conciliation at LRD went up from 63.2% in 2002 to 65.1% in 2003, an all-time high after the Asian financial crisis in 1997. The figure rose further to 67.1% in the first quarter of 2004. This had led to reduced number of unsettled cases to LT. In 2003, LRD referred 10 103 unsettled cases to LT, a decrease of 9% over 11 132 in 2002. For the first quarter of 2004, the figure stood at 2 119, representing a decrease of 19% over 2 601 for the same period in 2003 and a decrease of 11% over the figure in the last quarter of 2003; and
- (c) an agreement had been reached between LRD and LT on standardizing the claim form used by claimants. This would

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obviate the need for the claimants to provide to LT the same information which they had already given to LRD. The standardized form would be put into use shortly.

5. Judiciary Administrator (JA) briefed members on the updated position on review of the operation of LT as set out in his letter dated 17 May 2004 to the Panel (LC Paper No. CB(2)2424/03-04(02)) -

- (a) the Working Party appointed by the Chief Justice (CJ) to review the operation of LT (the Working Party) intended to submit its report to CJ by the end of June 2004;
- (b) the three-month experiment implemented in mid-2003 in listing callover cases separately in the morning and in the afternoon so as to minimize the time of the parties waiting for their cases to be heard proved to be satisfactory. The practice had been extended to other courts of LT. The other short-term improvement measures were continuing and would be reviewed by the Working Party; and
- (c) the current 12 courts were adequate to deal with the caseload. As at 3 May 2004, the waiting time from appointment to filing of claim was five days, as compared with 14 days in 2003. The waiting time from filing to callover hearing was 24 days, same as the figure in 2003.

(Post-meeting note - On (a) above, the Working Party's report was published in June 2004 and issued to the Panels (English version was issued on 2 July 2004 vide LC Paper No. CB(2)3004/03-04 and Chinese version on 23 July 2004 vide LC Paper No. CB(2)3149/03-04)).

Issues raised by members

Improvement measures for resolving disputes

6. Mr Andrew CHENG noted that in New Zealand, a proposed "fast track mediation" scheme was being considered (in the context of the Employment Relations Law Reform Bill), under which the disputing parties were encouraged to reach an agreed settlement within a specified period. If an agreement could not be reached, the mediator would make a decision on the case. In UK, a fixed period of conciliation (which varied according to the nature of the case) would be introduced so as to encourage the parties to settle their disputes as early as possible. On expiry of the specified period, the conciliator would decide whether to continue with conciliation, or refer the case to the Employment Tribunal for a hearing. Mr CHENG opined that the idea of setting a specified period of conciliation to encourage early settlement

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deserved careful consideration, adding that it was also necessary to provide safeguards against shortcomings such as the possibility of the parties being pressurized to reach a hasty settlement against their wish.

7. PS(EDL)(L) noted Mr Andrew CHENG's views. He said that the Administration was not aware of a serious problem as far as the time for conciliation was concerned. He said that as explained above, the average waiting time for conciliation meeting at LRD offices was 3.7 weeks. Most cases required only one conciliation meeting for a mediated settlement. In the absence of a settlement, the case would be referred to LT for adjudication.

8. Mr LEUNG Fu-wah said that under the existing dispute resolving system, settlement was sometimes delayed as a result of the duplication of work undertaken by LRD and LT, such as duplicated efforts in conducting conciliation. He pointed out that the existing legislation stipulated in unambiguous terms the rights and obligations of employers and employees. Therefore, he did not see the need for both LRD and LT to engage in conciliation of the same case. He further opined that under certain circumstances, such as in simple and straight-forward cases where the parties had no dispute on their statutory rights and obligations which had been clearly explained by the conciliator, a settlement could be achieved more speedily if the conciliator had authority to require mandatory compliance with his decision.

9. On the issue of conciliation, JA explained that the Labour Tribunal Ordinance required that the Tribunal Officers should conduct conciliation with a view to achieving settlement of a claim. He added that the concern about duplication of work of LRD and LT would be considered by the Working Party.

10. Mr LEE Cheuk-yan said that if a major reform of the existing system was considered necessary, he would be inclined to support a model similar to that in UK, where there were two specialized adjudicating bodies, i.e. an Employment Tribunal to adjudicate cases and an Employment Appeal Tribunal to handle appeals. This would expedite a final settlement without the need for an appeal to be taken to the High Court as was the present situation in Hong Kong. A more moderate approach, on the other hand, would be to streamline and simplify the existing practices and procedures. In this connection, Mr LEE reiterated his opinion expressed previously that there was no need for both callover hearings and pre-trial mention hearings in LT as they unnecessarily prolonged the length of the proceedings. The practice had given rise to a lot of complaints by the parties. In his view, mention hearings could be dispensed with because it was the duty of the Tribunal Officers to complete the investigative work and prepare all the necessary documents to ensure that the case could proceed to trial.

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11. JA explained that not all cases required the holding of both callover and pre-trial mention hearings. The Presiding Officer, after making enquiries at the callover hearing, might set down the matter for trial if the case was simple. However, if the matter required more evidence from the parties, the Presiding Officer would set it down for pre-trial mention. The purpose of pre-trial mention was to examine availability and completeness of evidence to decide whether the case was ready to proceed to trial. As evidential matters were sorted out during a pre-trial mention between the parties, who were not legally represented, the trial proceedings could actually be expedited.

12. Mr LEE Cheuk-yan asked whether it was the intention of LT to reduce the number of mention hearings to one for each case (Appendix I to the Research Report). JA replied that whether mention hearing was necessary in a particular case and the number of such hearings required were matters for the decision of the Presiding Officer, taking into consideration the special circumstances of the case.

13. In response to the Chairman and Mr LEUNG Fu-wah, PS(EDL)(L) said that where an unsettled case was referred to LT, LRD would pass to LT all the information and documents provided by the claimant. The claimant was not required to submit the information afresh.

Enforcement of judgment and appeals

14. Mr Andrew CHENG said that one of the major concerns of the employees was that they could not obtain the compensation awarded by LT in the event of default payment by their employers. Despite that the employees, as judgment creditors, could apply to the District Court to enforce the judgment, the time and expense involved might deter them from pursuing their claims. He suggested that a review on the mechanism for enforcement of judgement should be conducted in the light of the approach adopted in other jurisdictions. He pointed out that under the system in New Zealand, the party whose claim was successful might apply to the Employment Relations Authority for the issuing of a compliance order. If the compliance order was not complied with, the applicant could apply to the Employment Court, which had the power to sentence the person in default to imprisonment, order payment of a fine, or to have the person's property sequestered. There were other means available in New Zealand and UK, such as application for a court order to obtain information on the financial situation of the judgment debtor. Mr CHENG opined that these measures, particularly those adopted in New Zealand, provided substantive powers of the court to enforce judgments to protect the interests of the successful claimants. He suggested that the Administration should consider the practicality of introducing measures along similar lines.

15. Mr LEE Cheuk-yan agreed that the system of enforcing judgments in New Zealand was an effective mechanism for safeguarding the interests of the claimants.

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16. PS(EDL)(L) said that he appreciated the concern about difficulties experienced by employees in obtaining their entitled compensation because of defaults by the employers. The Administration would consider any suggestions on means to improve the situation. He added that, however, whether or not Hong Kong should adopt practices similar to that in New Zealand or other jurisdictions involved policy considerations, and should be examined in the light of the possible impact on other non-employment related civil claims. He said that the matter would be examined by the Administration, taking into account the relevant recommendations which might be made by the Working Party.

17. Referring to the power of the Employment Court of New Zealand to imprison defaulters who failed to comply with a compliance order, Ms Miriam LAU requested RLSD to provide supplementary background information on the grounds for providing the Court with such power.

(Post-meeting note - The supplementary Information Note (IN15/03-04) was issued to the Panels vide LC Paper No. CB(2)3075/03-04 on 14 July 2004.)

18. Ms Miriam LAU further suggested that the procedures for successful claimants to apply for court Bailiffs to execute a distress warrant to seize the judgment debtor's goods and properties should be simplified.

19. JA said that he would convey members' views for the consideration of the Working Party.

Legal aid in appeal cases

20. Mr Albert HO pointed out that in cases where the employers appealed to the Court of First Instance against the decision of LT, the employees often found themselves in a difficult situation because of the high costs of litigation which they had to bear. In many cases, the costs were out of proportion with the amount of compensation originally awarded to them by LT. As a result, a lot of employees, particularly those who failed to obtain legal aid, simply gave up their claims. Mr HO suggested that for labour dispute cases, the possibility of conducting the appeal without legal representation by both parties to the proceedings could be explored.

21. Mr HO further pointed out that in Taiwan, the losing party was not required to bear the solicitor's cost incurred by the winning party under certain circumstances (paragraph 5.2.27 of the Research Report). He suggested that a similar system could also be examined.

22. Ms Miriam LAU opined that it would be extremely difficult for the parties to argue their case in the court in the absence legal representation,

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particularly when the appeal was brought on grounds of a point of law. She said that to ensure justice and a fair trial, legal aid should by all means be provided to the employees.

23. Mr LEE Cheuk-yan said that he had previously recommended to the Administration that in cases where an appeal was lodged by the employer, then the employee as the respondent should be provided with legal aid, with the Director of Legal Aid exercising a discretion to waive the means test for legal aid. In cases where the employees were the appellants, the normal means testing would apply. Mr LEUNG Fu-wah supported the suggestion.

24. Mr CHAN Kwok-keung informed members that in 1999, he had proposed to amend the Legal Aid Ordinance to provide the Director of Legal Aid with the power to waive the financial eligibility limit for legal aid in respect of employees who were the respondents to appeals brought by their employers. However, the proposed amendments were not supported by the Administration.

25. In response to the Chairman, H/RL said that Hong Kong was the only place among the jurisdictions covered in the Research Report where legal representation was not allowed in the hearings of the adjudicating body. In New Zealand, legal aid covered proceedings of the adjudicating body. Legal aid was not available to cases in the Employment Tribunals in England and Wales, but was available to cases in the Employment Appeal Tribunal and the Employment Tribunals in Scotland subject to certain conditions. The conditions were as follows -

- (a) the applicant was unable to fund or find alternative representation elsewhere; or
- (b) the case was an arguable one; and
- (c) the case was too complex to allow the applicant to present it to a minimum standard of effectiveness.

The way forward

26. The Chairman requested the Administration and the Judiciary Administration to take into consideration the views expressed by members, as well as the findings of the Research Report, in reviewing the operation of LT.

Admin/
JA

27. JA said that he would revert to members on the findings and recommendations of the Working Party after its report had been completed and considered by CJ.

JA

28. The Chairman suggested and members agreed that the Panel on Administration of Justice and Legal Services and Panel on Manpower should

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hold a joint meeting to receive a briefing on the Working Party's report in due course.

29. The meeting ended at 5:30 pm.

Council Business Division 2
Legislative Council Secretariat
29 July 2004