

**立法會**  
**Legislative Council**

Ref : CB2/BC/7/06

LC Paper No. CB(2)2375/06-07  
(These minutes have been seen by  
the Administration)

**Bills Committee on  
Civil Justice (Miscellaneous Amendments) Bill 2007**

**Minutes of meeting  
held on Monday, 11 June 2007, at 4:30 pm  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon Margaret NG (Chairman)  
Hon James TO Kun-sun  
Hon LI Kwok-ying, MH, JP  
Hon Ronny TONG Ka-wah, SC

**Public Officers attending** : Judiciary Administration

Miss Emma LAU  
Judiciary Administrator

Miss Annie TANG  
Deputy Judiciary Administrator (Development)

Miss Vega WONG  
Assistant Judiciary Administrator (Development)

The Administration

Administration Wing, Chief Secretary for  
Administration's Office

Mrs Alice CHEUNG  
Assistant Director of Administration

Department of Justice

Mr K F CHENG  
Senior Assistant Law Draftsman

**Attendance by invitation** : Deputations

*Hong Kong Bar Association*

Mr Joseph FOK, SC

Mr P Y LO

*Hong Kong Mediation Council*

Mr Simon YEUNG  
Vice Chairperson

*ADR Chambers (Hong Kong) Limited*

Mr Norris YANG  
Executive Director

*Hong Kong Law Costs Draftsmen Association*

Mr Jacky W H NG  
Vice-Chairman

Mr Philip S C CHU  
Member

*The Law Society of Hong Kong*

Mr Amirali NASIR

Individual

Mr W S CLARKE

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

**Staff in attendance** : Miss Kitty CHENG  
Assistant Legal Adviser 5

Ms Amy YU  
Senior Council Secretary (2) 3

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Action

**I. Confirmation of minutes of meeting**

(LC Paper No. CB(2)2127/06-07)

The minutes of the meeting held on 30 May 2007 were confirmed.

**II. Meeting with deputations, the Judiciary Administration and the Administration**

(LC Paper Nos. CB(2)2111/06-07(01) -(04) - submissions

LC Paper Nos. CB(2)1995/06-07(03) and (04) - Assistant Legal Adviser's letter dated 9 May 2007 and the Judiciary Administration's response setting out a summary of the views received on the "Consultation Paper on Proposed Legislative Amendments for the Implementation of Civil Justice Reform" published in April 2006

LC Paper No. CB(2)1836/06-07(01) - Marked-up copy of the Bill prepared by the Legal Service Division

LC Paper No. CB(3)452/06-07 - The Bill

Issued vide LC Paper No CB(2)1960/06-07 - Final Report of the Working Party on Civil Justice Reform published in March 2004)

2. The Bills Committee received views from five deputations and one individual. The Bills Committee deliberated (index of proceedings attached at **Annex.**)

Administration 3. The Administration agreed to revert to the Bills Committee on the Bar Association's suggestion that public funds be made available to meet a legal representative's costs in successfully defending or appealing against a wasted costs order made on the court's own motion.

Judiciary Administration 4. The Judiciary Administration informed members that as the Hong Kong Law Costs Draftsmen Association had raised some new points in relation to the draft Orders 62 and 62A of the Rules of the High Court in its submission to the Bills Committee [LC Paper No. CB(2)2111/06-07(03)], the Judiciary Administration would forward such views to the Steering Committee for consideration and provide a written response to the Association and the Bills Committee in due course.

**III. Any other business**

5. Members noted that the next meeting would be held on 21 June 2007 at 4:30 pm.

Action

6. The meeting ended at 6:12 pm.

Council Business Division 2  
Legislative Council Secretariat  
4 July 2007

**Proceedings of the third meeting of the  
Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007  
on Monday, 11 June 2007, at 4:30 pm  
in Conference Room A of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 - 000539	Chairman	Confirmation of minutes of meeting Opening remarks	
000540 – 000925	Chairman Hong Kong Bar Association	Presentation of views [LC Paper No. CB(2)2111/06-07(01)]	
000926 – 001053	Chairman The Hong Kong Mediation Council	The Hong Kong Mediation Council did not object to the proposals in the Bill. However, the Council expressed regret that none of the recommendations in the Final Report on Civil Justice Reform ("Final Report") relating to alternative dispute resolution (ADR), in particular Recommendation 143 relating to the proposal to make an unreasonable refusal of ADR the basis for an adverse costs order, was included in the Bill	
001054 – 002135	Chairman ADR Chambers (HK) Limited	Presentation of views [LC Paper No. CB(2)2111/06-07(02)]	
002136 – 003043	Chairman The Hong Kong Law Costs Draftsmen Association	Presentation of views [LC Paper No. CB(2)2111/06-07(03)]  The Chairman's request that the submission of the Hong Kong Law Costs Draftsmen Association, which focused mainly on draft subsidiary legislation [Orders 62 & 62A of the Rules of the High Court (RHC)], be forwarded to the relevant subcommittee examining the subsidiary legislation after the enactment of the Bill	<b>Clerk to follow up</b>
003044 – 003438	Chairman Mr W S CLARKE	Mr CLARKE supported the proposals in the Bill and expressed the view that the overall impact of the Civil Justice Reform could not be appreciated without examining the amendments to the subsidiary legislation, which would contain the bulk of the actual changes	
003439 – 003720	Chairman The Law Society of Hong Kong	Presentation of views [LC Paper No. CB(2)2111/06-07(04)]	

Time marker	Speaker	Subject(s)	Action Required
003721 – 004631	Chairman Judiciary Administration	<p>Judiciary Administration's response to the views of deputations -</p> <p><u>Wasted costs</u></p> <p>(a) in response to Bar Association's suggestion of incorporating additional safeguards into the proposed legislative amendments on wasted costs, it would be made clear in the subsidiary legislation that wasted costs orders should be subject to an unqualified right of appeal to the Court of Appeal;</p> <p>(b) as regards the Bar Association's suggestion that public funds be made available to meet a legal representative's costs in successfully defending or appealing against a wasted costs order made by a judge on his own motion, the Judiciary Administration responded that there was currently no such fund for the wasted costs provisions which applied to solicitors. The proposal involved the use of public funds and should therefore be a matter for the Administration to decide;</p> <p>(c) regarding the Law Society's view that the proposed section 52A(5) of the High Court Ordinance (HCO) concerning "fearless advocacy" be removed, the Judiciary Administration explained that the proposed section was included having regard to the fact that similar amendments on "fearless advocacy" were proposed by the Administration for the Costs in Criminal Cases Ordinance in the Statute Law (Miscellaneous Provisions) Bill 2007. The Law Society's view would be forwarded to the Steering Committee for consideration;</p> <p><u>Alternative dispute resolution (ADR)</u></p> <p>(d) the Bill and the subsequent amendments to subsidiary legislation covered only those recommendations in the Final Report which required amendments to primary and/or subsidiary legislation; recommendations concerning ADR in the Final Report had not yet progressed to the legislative stage and hence were not included in the Bill;</p>	

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		<p>(e) the Judiciary Administration had been working with the Administration, the legal profession and the mediation profession to facilitate greater use of ADR. In 2007, the Chief Justice established a Working Party under the chairmanship of The Hon Mr Justice LAM to consider how consensual mediation of civil disputes in the Court of First Instance, the District Court and the Lands Tribunal might be facilitated. The Working Party, whose members included representatives from the relevant professional organizations, had already commenced its work;</p> <p>(f) the Judiciary Administration had over the past few years taken steps to promote the use of mediation through a number of pilot schemes. Apart from the Pilot Scheme for Family Mediation, the Pilot Scheme for Voluntary Mediation in relation to cases in the Construction and Arbitration List was introduced in 2006, and the Lands Tribunal was also exploring with the relevant professional bodies the viability of introducing a pilot scheme for voluntary mediation in relation to building management cases; and</p> <p><u>Taxation of costs</u></p> <p>(g) the Hong Kong Law Costs Draftsmen Association had raised some new points in relation to the draft RHC Orders 62 and 62A in its submission to the Bills Committee. The Judiciary Administration would forward such views to the Steering Committee for consideration and provide a written response to the Association and the Bills Committee in due course.</p>	<p><b>Judiciary Administration to follow up</b></p>
004632 – 004741	Chairman Administration	<p>With regard to the Bar Association's suggestion that public funds be made available to meet a legal representative's costs in successfully defending or appealing against a wasted costs order made on the court's own motion, the Administration responded that as the suggestion involved public funds, the Administration would need to further consider the suggestion before</p>	<p><b>Administration to follow up</b></p>

Time marker	Speaker	Subject(s)	Action Required
		reverting to the Bar Association and the Bills Committee	
004742 – 005104	Chairman Hong Kong Bar Association	The Bar Association expressed support for the proposed section 52A(5) of HCO in relation to "fearless advocacy" as an additional safeguard incorporated into the proposed legislative amendments on wasted costs. The Bar Association did not see any distinction between civil and criminal proceedings in this regard as the duty to fearlessly advocate for his client's case applied to all legal practitioners, barristers and solicitors alike	
005105 - 010957	Chairman Mr Ronny TONG Judiciary Administration The Law Society of Hong Kong Hong Kong Bar Association Mr W S CLARKE The Hong Kong Law Costs Draftsmen Association	<p>Discussion on the question as to who should pay the costs of the wasted costs hearing if the legal representative concerned succeeded in defending or appealing against a wasted cost order made by the court on its own motion</p> <p>The Bar Association's view that such costs should be borne by public funds as the wasted costs order was made by the court on its own motion rather than on application of a party</p> <p>Mr Ronny TONG' s view that such costs should not be borne by the public coffer as the Government was not a party to a civil litigation. It would be a fairer arrangement if such costs were to be borne by the party who stood to gain from the wasted costs hearing.</p>	
010958 - 012925	Chairman The Hong Kong Law Costs Draftsmen Association Judiciary Administration Mr W S CLARKE The Law Society of Hong Kong Hong Kong Bar Association	<p>The Chairman sought the views of deputations in respect of the following -</p> <p>(a) the constitutionality of having members of the Judiciary, as the real sponsor of the Bill, attending meetings of the Bills Committee to assist members in the scrutiny of the Bill; and</p> <p>(b) whether there was any part of the Bill which should be examined together with the relevant draft subsidiary legislation for a full appreciation of the implications of the Bill</p> <p>The Hong Kong Law Costs Draftsmen Association's view that it would be difficult for members to fully appreciate the impact</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>of the Bill without examining the draft subsidiary legislation relating to taxation of costs (RHC Orders 62 and 62A)</p> <p>The Chairman invited the deputations to give their views on (b) above to the Bills Committee after the meeting</p> <p>The Judiciary Administration's response that the finalised draft of the requisite amendments to subsidiary legislation incorporating revisions in the light of the comments received on the Consultation Paper issued in April 2006 was expected to be ready after summer and could be provided for members' reference if considered necessary by members</p>	<p><b>Clerk to follow up</b></p>
<p>012926 - 014120</p>	<p>Chairman Administration ADR Chambers (HK) Limited</p>	<p>The Chairman raised the point that members of the Panel on Administration of Justice and Legal Services (AJLS Panel) had expressed the view that it was not appropriate for the court to compel unwilling parties to mediate as it would impose an obstruction on their right of access to the court. There was also concern about the inherent probability of failure where mediation was other than consensual, as borne out by the findings of the recent research conducted by Professor Hazel Genn which suggested that increased pressure to mediate resulted in a decreased settlement rate</p> <p>Information provided by ADR Chambers (HK) Limited that experience in Ontario, Canada indicated that the requirement of mandatory attendance at a 3.5-hour mediation session had been successful in promoting settlement in some 50% of the cases</p> <p>The Administration informed members that it would report to the AJLS Panel at the end of the month on its evaluation on the Pilot Scheme on Mediation of Legally Aid Matrimonial Cases. The Administration was considering extending legal aid to cover the costs of mediation in matrimonial cases.</p>	