

立法會
Legislative Council

Ref : CB2/BC/7/06

LC Paper No. CB(2)481/07-08
(These minutes have been seen by
the Administration)

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

**Minutes of meeting
held on Tuesday, 20 November 2007, at 10:45 am
in Conference Room B 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 Vega WONG
Assistant Judiciary Administrator (Development)

The Administration

Administration Wing, Chief Secretary for
Administration's Office

Mr K C YAU
Assistant Director of Administration

Department of Justice

Mr Wesley WONG
Senior Assistant Law Officer (Civil Law)

Mr K F CHENG
Senior Assistant Law Draftsman

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

Action

I. Confirmation of minutes of meeting
(LC Paper No. CB(2)383/07-08)

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

II. Meeting with the Judiciary Administration and the Administration
(LC Paper No. CB(2)376/07-08(01) - A check-list of follow-up actions required of the Administration and Judiciary Administration)

LC Paper No. CB(2)376/07-08(02) - The Administration/Judiciary Administration's response to issues raised at the meetings on 12 and 30 October 2007

LC Paper No. CB(2)376/07-08(03) - Paper provided by the Administration/Judiciary Administration entitled "Proposed introduction of a leave requirement for appeals from the Lands Tribunal to the Court of Appeal"

LC Paper No. CB(2)376/07-08(04) - Proposed Committee Stage amendments to be moved by the Administration/ Judiciary Administration

LC Paper No. CB(2)137/07-08(01) to (05) - Orders 1A, 1B, 35, 62 and 62A of the Rules of the High Court

LC Paper No. CB(2)93/07-08(01) - Assistant Legal Adviser's further letter dated 11 October 2007 to the Assistant Director of Administration on Part 5 of the Bill

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)

2. The Bills Committee deliberated (index of proceedings attached at **Annex.**)
3. The Bills Committee had completed the clause-by-clause examination of the Bill.

Action

4. Members agreed that it was not necessary for the Bills Committee to further examine the draft subsidiary legislation in detail, in consideration that the enactment of the Bill would not prejudice the subsequent scrutiny of the relevant subsidiary legislation by the Legislative Council.

Admin/
Judiciary
Admin

5. The Administration/Judiciary Administration agreed to provide for the next meeting the wording of the proposed Committee Stage amendments (CSAs) to be moved by the Administration. Regarding the CSAs on the proposed leave requirement for appeals from the Lands Tribunal concerning points of law, the Administration/Judiciary Administration were requested to advise whether there were similar grounds for granting leave to appeal in respect of decisions from the Labour Tribunal and the Small Claims Tribunal and consider whether there should be consistency in the grounds for granting leave to appeal on points of law.

6. The meeting ended at 11:46 am.

Council Business Division 2
Legislative Council Secretariat
4 December 2007

**Proceedings of the eighth meeting of the
Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007
on Tuesday, 20 November 2007, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000252-000324	Chairman	Opening remarks Confirmation of minutes of meeting	
000325-000657	Chairman Judiciary Administration	<u>Part 5 - Vexatious litigants</u> Administration/Judiciary Administration's response to Assistant Legal Adviser's letter dated 11 October 2007 on Part 5 of the Bill (LC Paper No. CB(2)376/07-08(02), paragraph 2)	
000658-003119	Judiciary Administration Chairman Administration Mr James TO Mr LI Kwok-ying	<u>Part 6 -Discovery</u> The Judiciary Administration reported that the two legal professional bodies supported the proposed application of the "direct relevance" test to pre-action discovery of personal injuries (PI) cases (LC Paper No. CB(2)376/07-08(02), paragraph 3) Discussion on the Hong Kong Bar Association's comments on the impact of the new "direct relevance" test on the rights currently enjoyed by PI claimants to obtain pre-action discovery (Annex A to LC Paper No. CB(2)376/07-08(02)) Members' concern that the proposed application of the stricter test of "direct relevance" might render it more difficult for potential claimants of medical negligence cases to obtain relevant documents from hospitals Administration's response that - (a) the documentary evidence relevant to medical negligence cases usually took the form of hospital medical reports/notes which would be discoverable under the proposed "direct	

Time marker	Speaker	Subject(s)	Action Required
		<p>relevance" test, unless the application for such documents was couched in too wide terms and hence considered oppressive by the court; and</p> <p>(b) the proposed new test would only apply to pre-action discovery while all claimants would continue to enjoy the right to apply for discovery of "train of enquiry" documents after proceedings had commenced</p>	
003120-003511	ALA5 Chairman Mr LI Kwok-ying	<p>The legal adviser's comment that restricting potential PI claimants' right of access to "train of enquiry" documents might adversely impact on their applications for legal aid, because in the absence of such documents their applications might not pass the reasonable prospects of success test for the grant of legal aid</p> <p>The Chairman pointed out that there was nothing in the existing legislation which prevented the grant of legal aid for separate stages of legal proceedings, albeit it was seldom done in practice. Instead of committing its funding to all the proceedings of a case at the outset, the Legal Aid Department could limit its initial funding of an application to the funding of pre-action discovery to ascertain whether there was a valid claim first. The Chairman was, therefore, of the view that the issue raised by the legal adviser was related to the administration of the legal aid scheme rather than the Bill per se. The Panel on Administration of Justice and Legal Services would be a more appropriate forum for discussing the matter</p>	Clerk to follow up
003512-003704	Chairman Administration	<p><u>Part 7 - Wasted costs</u></p> <p>Administration's response that the Hong Kong Bar Association's suggestion regarding the provision of public funds to meet a legal representative's costs in</p>	

Time marker	Speaker	Subject(s)	Action Required
		successfully defending a court-initiated wasted costs order would require amendments to both primary and subsidiary legislation, and the Administration did not support the suggestion (LC Paper No. CB(2)376/07-08(02), paragraph 4)	
003705-003820	Chairman Judiciary Administration	<u>Part 8 -Leave to appeal</u> Judiciary Administration's response that having considered members' views, the Administration intended to propose Committee Stage amendments (CSAs) to amend the proposed section 14AA(4)(b) of the High Court Ordinance (HCO) and the proposed section 63A(2)(b) of the District Court Ordinance in relation to the threshold for obtaining leave to appeal (LC Paper No. CB(2)376/07-08(02), paragraph 5)	
003821-003857	Judiciary Administration Chairman	Administration's response to a member's previous enquiry on whether the proposed section 14AB of HCO contravened the Basic Law which stipulated that the power of final adjudication was vested in the Court of Final Appeal (LC Paper No. CB(2)376/07-08(02), paragraphs 6 and 7)	
003858-004849	Chairman Judiciary Administration Administration	<u>Part 12 - Land Tribunal</u> Briefing by the Judiciary Administration on its proposal to introduce CSAs to Part 12 of the Bill to introduce a leave requirement for appeals from the Lands Tribunal to the Court of Appeal (LC Paper No. CB(2)376/07-08(03)) The Chairman's view that as the proposed leave requirement sought to deal with the mischief that many of the appeals from the Lands Tribunal to the Court of Appeal had not been made in accordance with the statutory ground, i.e. the determination or order was erroneous in point of law, the sole threshold for	

Time marker	Speaker	Subject(s)	Action Required
		<p>granting leave should be whether such statutory ground was met. The Chairman enquired about the reasons for including other criteria for the grant of leave as spelt out in paragraph 8 of the paper</p> <p>The Administration/Judiciary Administration's response that -</p> <ul style="list-style-type: none"> (a) as the statutory ground that any appeal must be on a point of law was already provided for in the existing section 11(2) of the Lands Tribunal Ordinance, the Administration/Judiciary Administration saw no need to separately provide this as a ground for granting leave; (b) the other proposed criteria for grant of leave, i.e. leave would only be granted where there was a reasonable prospect of success or some other compelling reason for the appeal, were in line with those applicable to other leave to appeal cases heard or determined by the Court of Appeal; and (c) the two legal professional bodies had been consulted on the proposed leave requirement and did not raise any objections <p>The Chairman's view that consideration should be given as to the need for consistency in the criteria for the grant of leave in respect of appeals on point of law, and requested the Administration/Judiciary Administration to advise the current position in respect of appeals from the Labour Tribunal and the Small Claims Tribunal concerning points of law</p>	<p>Administration/ Judiciary Administration to follow up</p>
004850-005119	Chairman Judiciary Administration	The Judiciary Administration agreed to provide the wording of the proposed CSAs in December 2007	Administration/ Judiciary Administration to follow up

Time marker	Speaker	Subject(s)	Action Required
005120-005349	Chairman Judiciary Administration	Examination of clauses 14 - 17 of the Bill in relation to Part 6 of the Bill on discovery The legal adviser to examine the Chinese version of the Bill	
005350-005729	Chairman Mr Ronny TONG	Members considered that the enactment of the Bill would not prejudice the subsequent scrutiny of the relevant subsidiary legislation by LegCo and hence agreed that it was not necessary for the Bills Committee to further examine the draft subsidiary legislation in detail	
005730-010105	Chairman Mr Ronny TONG Mr LI Kwok-ying Judiciary Administration	Date of next meeting	