

立法會
Legislative Council

LC Paper No. CB(2)2464/06-07
(These minutes have been
seen by the Administration)

Ref : CB2/BC/8/06

Bills Committee on Statute Law
(Miscellaneous Provisions) Bill 2007

Minutes of the third meeting
held on Saturday, 16 June 2007, at 9:30 am
in Conference Room A of the Legislative Council Building

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

Member absent : Hon LEUNG Kwok-hung

Public Officers attending : Item I

Department of Justice

Mr Ian WINGFIELD
Solicitor General

Mr Michael SCOTT
Senior Assistant Solicitor General

Mr Patrick CHEUNG
Senior Assistant Director of Public Prosecutions

Mr Llewellyn MUI
Senior Assistant Solicitor General (Ag.)

Ms Rayne CHAI
Senior Government Counsel
Law Drafting Division

Ms Rosa PANG
Senior Government Counsel
Law Drafting Division

Ms Stella CHAN
Government Counsel
Legal Policy Division

Mrs Apollonia LIU
Principal Assistant Secretary for Security

Miss Rosalind CHEUNG
Assistant Secretary for Security

**Deputations/
individual
by invitation**

: Item I

Hong Kong Bar Association

Mr P Y LO

Mr Andrew Bruce, SC

The Law Society of Hong Kong

Mr Stephen HUNG Wan-shun
Council member and Chairman of the Criminal Law &
Procedure Committee

Mr Dieter YIH
Chairman of the Standing Committee on Standards and
Development

Miss Heidi CHU
Director of Standards and Development

Miss Angela LI
Assistant Director, Regulation and Guidance

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Hong Kong Human Rights Commission

Mr TSOI Yiu-cheong
Member

Amnesty International Hong Kong

Mr HUNG Fan-keung
Campaigner Manager

Mr WU Ho-tong
Campaigner

Hong Kong Federation of Students

Mr LI Yiu-kee
Representative

Miss Winnie LAI Yuen-hung
Representative

Individual

Mr LO Wai-ming

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 4

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Mr Chris LAI
Senior Council Secretary (2) 7

Miss Maggie CHIU
Legislative Assistant (2) 4

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The Bills Committee deliberated (index of proceedings attached at **Annex**).

I. Meeting with deputations and the Administration

[The Bill, LC Paper Nos. CB(2)1759/06-07(01), CB(2)1975/06-07(02), CB(2)2034/06-07(01) to (05), CB(2)2106/06-07(01) to (03), CB(2)2107/06-07(01), CB(2)2163/06-07(01) and CB(2)2183/06-07(01) to (02)]

2. The Bills Committee received views from six organizations and one individual attending the meeting (index of proceedings attached at **Annex**).

3. The Bills Committee noted the written submissions from the Consumer Council and the Legal Aid Department (LC Paper Nos. CB(2)2106/06-07(01) and (02) respectively) which had not sent representatives to the meeting.

Proposed amendments to the Costs in Criminal Cases Ordinance (Cap. 492) relating to wasted costs in criminal proceedings (Part 7 of the Bill)

4. Members noted that the two legal professional bodies expressed reservations about the proposed amendments to the Costs in Criminal Cases Ordinance.

5. To facilitate the Bills Committee to consider the proposed amendments and the Administration to provide a response, Mr Andrew BRUCE of The Hong Kong Bar Association agreed to provide The Bar Association's views in writing, in particular on the following –

- (a) the proposed amendments to the definition of "wasted costs" in section 2 of the Ordinance;
- (b) the definition of "wasted costs" in section 19A of the Prosecution of Offenders Act 1985 in the United Kingdom; and
- (c) the drafting of the proposed new section 18(3) of the Ordinance which stipulated that "the court or the judge shall, in addition to all other relevant circumstances, take into account the interest that there be fearless advocacy under the adversarial system of justice".

Proposed amendments to the Public Order Ordinance (Cap. 245) and the Societies Ordinance (Cap. 151) (Part 3 of the Bill)

6. Members noted that the two legal professional bodies were of the view that

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Association

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the proposed amendments were in line with the Court of Final Appeal (CFA)'s judgment on the case "*Leung Kwok Hung & Others v HKSAR*", and they had no objections to the amendments. Other deputations attending the meeting, however, considered that the Administration should take the opportunity to review the relevant provisions in the Public Order Ordinance (POO). They also agreed to the suggestion that the Bills Committee should consider deleting the proposed amendments in Part 3 of the Bill, if the Administration did not agree to conduct a comprehensive review of POO.

ALA2 7. The Chairman requested the legal adviser to the Bills Committee to provide a paper on the effect of not passing the proposed amendments in Part 3 of the Bill.

8. Noting that some deputations had made reference to their own experience and highlighted the deficiency of the Appeal Board on Public Meetings and Processions, the Chairman requested these deputations to provide supplementary information to the Bills Committee for consideration.

Admin 9. The Bills Committee requested the Administration to provide responses to the following issues –

- (a) an overall response to the concern and issues raised by the deputations; and
- (b) the interpretation of the term "the protection of rights and freedoms of others" under POO, supported by relevant cases, if any.

II. Date of next meeting

10. Members agreed to hold the next meeting on 3 July 2007 at 9:00 am to continue discussion with the Administration.

11. There being no other business, the meeting ended at 11:37 am.

Council Business Division 2
Legislative Council Secretariat
11 July 2007

**Proceedings of the third meeting of the
Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2007
on Saturday, 16 June 2007, at 9:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker(s)	Subject(s)	Action required
000000 - 001046	Chairman	Opening remarks and date of next meeting	
001047 - 002235	The Hong Kong Bar Association Admin	<p>Presentation of views on Part 3 of the Bill –</p> <p>(a) no objection to the proposed amendments to the Public Order Ordinance (POO) (Cap. 245) and Societies Ordinance (SO) (Cap. 151);</p> <p>Presentation of opposing views on Part 7 of the Bill –</p> <p>(b) the expression of "misconduct", "default", and "improper or unreasonable acts or omission" in the proposed definition of "wasted costs" were too vague and wide in scope; and</p> <p>(c) there was inequality arising from the difference in treatment in respect of lawyers in private practice and Government lawyers as the former would be personally liable to payment of costs under a wasted cost order, while that of the latter was funded by public money</p>	Bar Association to provide its views in writing (para. 5 of the minutes)
002236 - 003050	The Law Society of Hong Kong	Presentation of views on Parts 4, 5, 6, 7 and 10 of the Bill [LC Paper Nos. CB(2)2034/06-07(05), CB(2)2106/06-07(01) and CB(2)2163/06-07(01)]	
003051 - 003714	Hong Kong Human Rights Monitor	Presentation of views on Part 3 of the Bill	
003715 - 004447	Hong Kong Human Rights Commission Chairman	Presentation of views on Part 3 of the Bill [LC Paper No. CB(2)2183/06-07(01)]	
004448 - 005232	Amnesty International Hong Kong	Presentation of views on Part 3 of the Bill [LC Paper No. CB(2)2183/06-07(02)]	
005233 - 010007	Hong Kong Federation of Students	Presentation of views on Part 3 of the Bill [LC Paper No. CB(2)2222/06-07(01)]	
010008 - 010610	Mr LO Wai-ming	Presentation of views on Part 3 of the Bill [LC Paper No. CB(2)2222/06-07(02)]	
010611 - 011809	Chairman Admin	<p>Administration's initial response to deputations' views –</p> <p>(a) the Commissioner of Police (CP) had raised</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>objections to only a very small number (0.16%) of notified public meetings and processions between 2002 and 2006;</p> <p>(b) the Administration had provided the Panel on Security with information on the measures taken by the Police and the operational procedures on the processing of notifications of public meetings and processions under POO after the handing down of the Court of Final Appeal (CFA)'s judgment on <i>Leung Kwok Hung and Others v HKSAR</i> case in 2005;</p> <p>(c) discussions on the review of POO had been and could be held;</p> <p>(d) there were express statutory requirements for the Police to give reasons for prohibiting/objecting to notified public meetings and processions;</p> <p>(e) POO provided for an independent Appeal Board on Public Meetings and Processions to hear appeals against the exercise of CP's discretion to prohibit, object to or impose conditions on a notified public meeting and procession; and</p> <p>(f) a response would be provided to The Bar Association's written submissions on proposed amendments relating to wasted costs in criminal proceedings</p>	
011810 - 012900	Mr Ronny TONG Hong Kong Human Rights Commission Hong Kong Human Rights Monitor The Hong Kong Bar Association Chairman	<p>Discussion on Mr Ronny TONG's concern whether –</p> <p>(a) the proposed amendments of deleting references to "<i>ordre public</i>" from POO were in conformity with CFA's judgment; and</p> <p>(b) the proposed amendments should be repealed, if the Administration did not agree to conduct a comprehensive review of POO</p>	
012901 - 013300	Ms Emily LAU	<p>Views of Ms Emily LAU that –</p> <p>(a) the proposed amendments relating to wasted costs in criminal proceedings would create, rather than solve, problems in the administration of justice; and</p> <p>(b) a comprehensive review of POO in the context of protection of human rights of Hong Kong people should be conducted without delay</p>	
013301 - 014129	Individual – Mr LO Wai-ming	The effectiveness of the appeal mechanism provided for under POO	

Time marker	Speaker(s)	Subject(s)	Action required
	The Hong Kong Bar Association Hong Kong Human Rights Monitor Hong Kong Human Rights Commission	The judgment delivered by the European Court of Human Rights in the case of <i>Bączkowski and Others v Poland</i> in 2007 provided by Mr P Y LO of The Bar Association and its implications on the processing of notifications of public meetings and processions [LC Paper No. CB(2)2222/06-07(03)]	
014130 - 014342	Chairman	The Chairman's requests for – (a) supplementary information from deputations on the effectiveness of the appeal mechanism relating to notifications of public meetings and processions; (b) interpretation of the term "the protection of rights and freedoms of others" under POO; and (c) the legal adviser's advice on the effect of not passing the proposed amendments in Part 3 of the Bill	Admin to follow up (para. 9(b) of the minutes) ALA2 to follow up (para. 7 of the minutes)
014343 - 015038	Mr Ronny TONG The Hong Kong Bar Association	Further discussion on the proposed amendments of deleting references to " <i>ordre public</i> " from POO	
015039 - 015309	Ms Emily LAU Admin	Further discussion on the suggestion of reviewing POO in the light of deputations' views	Admin to provide response (para. 9(a) of the minutes)
015310 - 015529	Chairman ALA2 The Hong Kong Bar Association	Request for further information from the Bar Association on their issues of concern about Part 7 of the Bill Correspondence between the legal adviser to the Bills Committee and Department of Justice on the legal and drafting aspects of the Bill	Bar Association to provide submissions (para. 5 of the minutes)
015530 - 015635	Chairman	Date of next meeting	