

立法會
Legislative Council

Ref : CB2/HS/1/07

LC Paper No. CB(2)1359/07-08
(These minutes have been seen
by the Administration)

**Subcommittee on Draft Subsidiary Legislation
Relating to the Civil Justice Reform**

**Minutes of the third meeting
held on Friday, 29 February 2008, at 4:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon LI Kwok-ying, MH, JP
Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon James TO Kun-sun
Hon Miriam LAU Kin-ye, GBS, JP
- Public Officers attending** : Item I
Judiciary Administration
Miss Vega WONG
Assistant Judiciary Administrator (Development)
The Administration
Department of Justice
Mr Wesley WONG
Senior Assistant Law Officer (Civil Law)
Mr K F CHENG
Senior Assistant Law Draftsman
- Attendance by invitation** : Item I
Hong Kong Bar Association
Mr Joseph FOK, SC
Chairman, Special Committee on Civil Justice Reform

Mr P Y LO
Member, Special Committee on Civil Justice Reform

Ms Eva SIT
Member, Special Committee on Civil Justice Reform

The Law Society of Hong Kong

Mr Lester HUANG
President

Mr James Jamison
Council Member

Ms Joyce WONG
Director of Practitioners Affairs

Mr Eric CHEUNG
Assistant Professor, Faculty of Law,
The University of Hong Kong

Mr Gary Meggitt
Teaching Consultant, Faculty of Law,
The University of Hong Kong

Prof LEE Jung-soo
Assistant Professor, School of Law,
The Chinese University of Hong Kong

Prof Swati Jhaveri
Assistant Professor, School of Law,
The Chinese University of Hong Kong

Hong Kong Mediation Council

Mr Simon YEUNG
Vice Chairman

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. Meeting with deputations and the Administration/Judiciary Administration
(LC Paper No. CB(2)1195/07-08(01)- Submission from Hong Kong Bar Association)

LC Paper No. CB(2)1225/07-08(01)- Submission from The Law Society of Hong Kong

LC Paper No. CB(2)1225/07-08(02)- Submission from The Hong Kong Law Costs Draftsmen Association

LC Paper No. CB(2)1255/07-08(01)- Submission from Mr Eric CHEUNG, Assistant Professor, Faculty of Law, The University of Hong Kong

LC Paper No. CB(2)1265/07-08(01)- Submission from Mr Gary Meggitt, Teaching Consultant, Faculty of Law, The University of Hong Kong

LC Paper No. CB(2)1129/07-08(01) - Paper entitled "Policy aspects of the proposed amendments to the Rules of the High Court (Cap. 4A)" provided by the Judiciary Administration

LC Paper No. CB(2)1152/07-08(01) - Paper entitled "Summary of responses to the draft Rules of the High Court (Amendment) Rules" provided by the Judiciary Administration

LC Paper No. CB(2)1000/07-08(01) - Paper entitled "Proposed Amendments to the Rules of the High Court (Cap. 4A)" provided by the Judiciary Administration (the latest draft subsidiary legislation are set out at Annexes B and C to the paper)

LC Paper Nos. CB(2)2111/06-07(01) - (04); CB(2)2260/06-07(01); CB(2)2393/06-07(01) - (02); CB(2)2429/06-07(02) and CB(2)27/07-08(06) - Submissions from deputations to the Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007 and the Judiciary Administration/Administration's responses)

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

**Judiciary
Admin**

2. The Judiciary Administration was requested to -

- (a) provide a written response to the views expressed by organizations/individuals; and
- (b) provide information on the total number of unrepresented litigants in the past few years, and the number of those who had obtained assistance from the Resource Centre for Unrepresented Litigants.

Action

3. The Chairman invited the deputations present to give some thoughts to the following issues and provide their views to the Subcommittee -

- (a) the impact of the proposed legislative amendments, in particular those relating to pre-action protocols, judicial review and case management powers of the court, on unrepresented litigants;
- (b) the impact of the proposed rules in terms of justice between represented litigants and unrepresented litigants, e.g. in the case of application for relief from sanctions for non-compliance of pre-action protocols (Order 2, rule 5), whether the former (who were expected to be capable of full compliance) would be put in an disadvantageous position vis-a-vis the latter (who were expected to be not familiar with the law and court procedures); and
- (c) whether it would be feasible for Hong Kong courts to make reference to the case law in UK if only certain provisions of the Civil Procedure Rules were adopted in Hong Kong.

II. Any other business

4. There being no other business, the meeting ended at 6:14 pm.

Council Business Division 2
Legislative Council Secretariat
18 March 2008

**Proceedings of the third meeting of the
Subcommittee on Draft Subsidiary Legislation
Relating to the Civil Justice Reform
on Friday, 29 February 2008, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000108-000743	Chairman	Opening remarks	
000744-002912	Hong Kong Bar Association Chairman Mr Ronny TONG	<p>Presentation of views by the Hong Kong Bar Association [LC Paper No. CB(2)1195/07-08(01)]</p> <p>With reference to paragraph 14 of the Bar Association's submission concerning its suggestion that public funds should be made available to meet the legal representatives' costs in successfully defending a wasted costs order, the Chairman's clarification that only the Government, and not the Legislative Council, could move legislative amendments that had charging effect</p>	
002913-003703	Chairman Hong Kong Bar Association	<p>Order 53 - Judicial review</p> <p>The Chairman's concern about the adverse impact of the following on the public's access to judicial review as a channel for seeking redress against decisions made by public bodies -</p> <p>(a) the requirement sought to be imposed by the proposed Order 53 rules 2A and 2B that applications for leave to bring a claim for judicial review should be served with all supporting evidence on the proposed respondent and on any other persons known by the applicant to be directly affected by the claim, unless the court direct otherwise; and</p> <p>(b) a recent Court of Final Appeal decision to raise the threshold for granting application for leave to apply for judicial review, from "potential arguability" to "reasonable arguability"</p>	
003704-004027	Chairman The Law Society of Hong Kong	<p>Presentation of views [LC Paper No. CB(2)1225/07-08(01)]</p>	
004028-004435	The Law Society of Hong Kong	<p>The Law Society's view that the implementation of the Civil Justice Reform would bring about significant changes in two respects, namely front-end loading of costs and increased case management powers by the court. According to the UK experience, the Civil Procedure Rules had not been successful in bringing about reduction in litigation expenses</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
004436-004840	Chairman The Law Society of Hong Kong	The Law Society's views on the proposed requirement in order 41 that pleadings should be verified by statements of truth	
004841-010742	Chairman Mr Eric CHEUNG	Presentation of views [LC Paper No. CB(2)1255/07-08(01)]	
010743-011716	Chairman Mr Gary Meggitt	Presentation of views [LC Paper No. CB(2)1265/07-08(01)]	
011717-011736	Chairman Prof LEE Jung-soo	Presentation of views	
011737-011900	Chairman Prof Swati Jhaveri	Presentation of views	..
011901-012140	Chairman Hong Kong Mediation Council	Presentation of views	
012141-012750	Mr Ronny TONG Chairman Hong Kong Bar Association	Mr Ronny TONG's view that the new rules were less user-friendly than the existing rules and the new rules should not forsake justice for efficiency. Mr TONG's concern that under Order 2, rule 3, a plaintiff would be at an advantageous position vis-a-vis a defendant, as in ordering a party who failed to comply with a practice direction or pre-action protocol to pay a sum of money as security, the court shall have regard to the amount in dispute	
012751-013522	Chairman Mr Ronny TONG The Law Society of Hong Kong	The Judiciary Administration was requested to provide information on the total number of unrepresented litigants in the past few years, and the number of those who had obtained assistance from the Resource Centre for Unrepresented Litigants The Chairman's view that unrepresented litigants could obtain only limited assistance from the Resource Centre for Unrepresented Litigants which did not provide any legal advice	Judiciary Administration to follow up
013523-013718	Mr Eric CHEUNG	Expressed reservation about the proposed imposition of automatic sanction on non-compliance of pre-action protocols which was particularly onerous to unrepresented litigants Mr CHEUNG's view that while it was important to ensure that the proposed changes would not aggravate the difficulties faced by unrepresented litigants, it had to be recognized that unrepresented litigants would always find it difficult to navigate the complexities of civil justice system and the best response would be to get them legal representation where possible by promoting pro-bono services	

Time Marker	Speaker(s)	Subject(s)	Action required
013719-014224	Mr Ronny TONG Chairman	<p>The Chairman invited the deputations to give some thoughts to the following issues and provide their views to the Subcommittee -</p> <ul style="list-style-type: none"><li data-bbox="641 352 1214 506">(a) the impact of the proposed legislative amendments, in particular those relating to pre-action protocols, judicial review and case management powers of the court, on unrepresented litigants;<li data-bbox="641 537 1214 869">(b) the impact of the proposed rules in terms of justice between represented litigants and unrepresented litigants, e.g. in the case of application for relief from sanctions for non-compliance of pre-action protocols (Order 2, rule 5), whether the former (who were expected to be capable of full compliance) would be put in an disadvantageous position vis-a-vis the latter (who were expected to be not familiar with the law and court procedures); and<li data-bbox="641 900 1214 1022">(c) whether it would be feasible for Hong Kong courts to make reference to the case law in UK if only certain provisions of the Civil Procedure Rules were adopted in Hong Kong <p>The Chairman said that the Subcommittee might have to consult the deputations from time to time on specific issues relating to the draft subsidiary legislation</p>	
014225-014335	Chairman	The Judiciary Administration was requested to provide a written response to the views/concerns expressed by deputations	Judiciary Administration to follow up