

**立法會**  
**Legislative Council**

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LC Paper No. CB(2)2560/07-08  
(These minutes have been seen  
by the Administration)

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

**Minutes of the eighth meeting  
held on Thursday, 24 April 2008, at 8:30 am  
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)  
Hon Miriam LAU Kin-yee, GBS, JP  
Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon James TO Kun-sun  
Hon LI Kwok-ying, MH, JP
- Public Officers attending** : Item II  
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
- 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)1703/07-08 - Minutes of meeting on 8 April 2008)

The minutes of meeting held on 8 April 2008 were confirmed.

**II. Meeting with the Administration/Judiciary Administration**  
(LC Paper No. CB(2)1705/07-08(01) - Paper entitled "Procedure under New Order 25 - Case Management Summons and Conference" provided by the Judiciary Administration)

LC Paper No. CB(2)1000/07-08(01) - Proposed amendments to RHC together with the following Annexes -

Annex A - a summary table setting out the RHC Orders affected and the relevant Amendment Rules in the Draft RHC

Annex B - the Draft RHC

Annex C - the marked-up version of the provisions affected by the amendments in the Draft RHC

LC Paper No. CB(2)1129/07-08(01) - Policy aspects of the proposed amendments to RHC

LC Paper No. CB(2)1152/07-08(01) - Summary of views received on the Draft RHC during the public consultations in April 2006 and October 2007 and the response of the Steering Committee on Civil Justice Reform

LC Paper No. CB(2)1373/07-08(02) - Judiciary's response to the first round of submissions from deputations)

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

Scrutiny of the proposed amendments to the Rules of the High Court (RHC)

**Judiciary  
Admin**

3. The Judiciary Administration was requested to –

Part 10 - Case Management Timetabling and Milestones

- (a) consider adding a note to the questionnaire on case management to alert the parties that they should, as far as possible, try to agree the directions and timetable for the case without requiring reference to the court;
- (b) consider setting out explicitly in Order 25 rule 1B the threshold for granting applications for variation of milestone dates, as in the case of non-milestone dates;

Action

Part 11 - Vexatious Litigants

- (c) clarify the mode for commencing proceedings for applications for vexatious litigant orders under the existing and proposed procedures; and consider whether a fast-track procedure should be provided for applications involving little or no factual disputes;

Part 15 – Wasted Costs

- (d) clarify the scope of "legal representative" as defined in Order 62 rule 1(1), in particular whether it covered ex-legal representatives where a litigant had changed legal representatives in the course of the litigation; and
- (e) clarify whether there were any sanctions under the proposed rules for breach of Order 62 rule 8C (Application for wasted costs order not to be used as a means of intimidation) and address members' concern about the practical difficulties in monitoring compliance with the rule.

**III. Any other business**

- 4. The Chairman reminded members that the next meeting would be held on Tuesday, 29 April 2008 at 10:45 am.
- 5. The meeting ended at 10:20 am.

Council Business Division 2  
Legislative Council Secretariat  
8 July 2008

**Proceedings of the eighth meeting of the  
Subcommittee on Draft Subsidiary Legislation  
Relating to the Civil Justice Reform  
on Thursday, 24 April 2008, at 8:30 am  
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000207 - 000250	Chairman	Confirmation of minutes of meeting	
000251 - 001134	Chairman Mr Ronny TONG Ms Miriam LAU	Discussion on the work plan of the Subcommittee proposed by the Judiciary Administration (JA)	
001135 - 002154	Chairman Judiciary Administration	<u>Part 10 - Case Management Timetabling and Milestones</u> (Recommendation 49)  Briefing by JA on its paper entitled "Procedure under New Order 25 - Case Management Summons and Conference" [LC Paper No. CB(2)1705/07-08(01)]	
002155 - 002220	Chairman Judiciary Administration	Order 14 rule 6	
002221 - 002233	Chairman Judiciary Administration	Order 18 rule 21(3)	
002234 - 002248	Chairman Judiciary Administration	Order 24 rule 2(7), rule 4(2)	
002249 - 002717	Chairman Judiciary Administration	<u>New Order 25</u>  rule 1 - Case Management Summons and Conference  Members noted from JA that the questionnaire on case management would be prescribed by a practice direction. The Chairman's view that unrepresented litigants might not be aware of the practice direction and consideration should be given to adding a note to the questionnaire to alert the parties that they should, as far as possible, try to agree the directions and timetable for the case without requiring reference to the court  JA's response that -  (a) the drafting of the questionnaire was still underway and the legal profession would be consulted in due course before promulgation; and	<b>JA to follow up</b>

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		(b) the chairman's view would be taken into consideration in designing the questionnaire.	
002718 - 002817	Chairman Judiciary Administration	rule 1A - Case management timetable	
002818 - 003305	Chairman Judiciary Administration Ms Miriam LAU	<p>rule 1B - Variation of case management timetable</p> <p>Ms Miriam LAU noted that it was specified in rule 1B(5) that the court would not grant an application for variation of a non-milestone date unless there were sufficient grounds for doing so, but rule 1B was silent on the threshold for granting an application for variation of a milestone date</p> <p>JA's response that the approach was in line with the recommendation in the Final Report that milestone dates could only be varied in exceptional circumstances, and this could be made clear in a practice direction. JA was requested to consider setting out explicitly in rule 1B the threshold for granting applications for milestone dates</p>	<b>JA to follow up</b>
003306 - 004012	Chairman Judiciary Administration Ms Miriam LAU Administration	rule 1C - Failure to appear at case management conference or pre-trial review	
004013 - 004049	Chairman Judiciary Administration	rules 2 to 7 and rule 9 - consequential amendments	
004050 - 004112	Chairman	rule 10 - Application to action in specialist list	
004113 - 004221	Chairman Judiciary Administration Administration	rule 11 - Transitional provision	
004222 - 004242	Chairman Judiciary Administration	Order 28 rules 4, 8 and 9	
004243 - 004257	Chairman Judiciary Administration	Order 29 rules 7(2) and 14	
004258 - 004313	Chairman Judiciary Administration	Order 33 rules 4(1) and 5	
004314 - 004342	Chairman Judiciary Administration	Order 34 rules 2(1) and 3(1c)	
004343 - 004407	Chairman Judiciary Administration	Order 37 rules 4(3) and 10	

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
004408 - 004518	Chairman Judiciary Administration	Order 38 rules 2A(2), 7(1) and 35 (1)	
004519 - 004532	Chairman Judiciary Administration	Order 72 rule 8	
004533 - 004611	Chairman Judiciary Administration	Order 75 rules 18(10), 25, 26, 38, 40 and 41	
004612 - 004640	Chairman Judiciary Administration	Order 78 rule 5	
004641 - 004649	Chairman Judiciary Administration	Order 86 rule 5	
004650 - 004700	Chairman Judiciary Administration	Order 102 rule 7	
004701 - 004711	Chairman Judiciary Administration	Order 103 rule 26	
004712 - 004720	Chairman Judiciary Administration	Order 115 rule 8(3)	
004721 - 004739	Judiciary Administration Chairman	Order 115A rule 18	
004740 - 004805	Chairman Judiciary Administration	Order 117 rule 10(3)	
004806 - 005113	Mr Ronny TONG Chairman Judiciary Administration ALA5	Progress of the drafting of the Chinese version of the draft subsidiary legislation  JA advised that the Chinese version of the current draft Rules of the High Court was under preparation, and would be ready by the end of May 2008	
005114 - 005220	Chairman Judiciary Administration Mr Ronny TONG	<u>Part 11 - Vexatious Litigants</u> (Recommendation 69)  Order 18 rule 19	
005221 - 005302	Chairman Judiciary Administration	Order 32 rule 11(1)(da)	
005303 - 005338	Chairman Judiciary Administration	<u>New Order 32A</u>  rule 1 – Application under section 27(1) of the Ordinance	
005339 - 005540	Chairman Judiciary Administration Administration	rule 2 – Application for leave for institution or continuance of proceedings, etc.	

Time Marker	Speaker(s)	Subject(s)	Action required
005541 - 010906	Chairman Judiciary Administration Mr Ronny TONG Administration	<p>rule 3 – Hearing and determination of application for leave</p> <p>JA/Administration’s clarification that an application for leave for institution or continuance of proceedings under rule 3(1) could be determined by a single judge without a hearing</p> <p>JA/Administration’s explanation that –</p> <ol style="list-style-type: none"> <li>a. it was envisaged that most of the applications made under rule 3(1) would be dealt with summarily without a hearing;</li> <li>b. the rule was designed to ensure that the person against whom the applicant wished to institute or continue proceedings would not be bothered at the leave application stage; and</li> <li>c. as already provided for in the amendments to the primary legislation, an applicant whose application for grant of leave under rule 3(1) had been refused could not appeal against the decision unless leave to appeal had been granted by the Court of First Instance</li> </ol>	
010907 - 011419	Mr Ronny TONG Administration Chairman Judiciary Administration	<p>Members noted that under the proposed Order 32A rule 1, an application for a vexatious litigant order was to be made by way of originating summons</p> <p>Mr Ronny TONG’s view that there should be fast-track procedures for applications made under the rule</p> <p>JA was requested to clarify the mode for commencing proceedings for applications for vexatious litigant orders under the existing and proposed procedures; and consider whether a fast-track procedure should be provided for applications involving little or no factual disputes</p> <p>Scrutiny of Part 11 to be held in abeyance pending the Administration's response on the above</p>	<b>JA to follow up</b>
011420 - 011531	Chairman Judiciary Administration	<p><u>Part 12 – Discovery</u> (Recommendations 76, 79 and 80)</p> <p><u>Order 24</u></p> <p>rule 7A(3)(a)(b), rule 7A(3A)</p>	

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011532 - 011543	Chairman Judiciary Administration	rule 7A(7)	
011544 - 011605	Judiciary Administration Mr Ronny TONG	rule 8	
011606 - 011725	Chairman Judiciary Administration	rule 15A	
011726 - 011953	Chairman Judiciary Administration	<u>Part 13 – Interlocutory Applications</u> (Recommendations 83, 85 and 86)  <u>Order 32</u>  rule 11A	
011954 - 012105	Chairman Judiciary Administration	rule 11B	
012106 - 012140	Chairman Judiciary Administration	rule 11(1)(a)	
012141 - 012323	Chairman Judiciary Administration	Scrutiny of Part 14 (Interlocutory Applications and Summary Assessment of Costs) to be deferred to the next meeting	
012324 - 012425	Chairman Judiciary Administration	<u>Part 15 – Wasted Costs</u> (Recommendation 94 to 97)  <u>Order 62</u>  rule 1(1)	
012426 - 012540	Judiciary Administration Chairman	rule 8 (1)	
012541 - 012808	Mr Ronny TONG Chairman Judiciary Administration	Discussion on definition of “legal representative” in Order 62 rule 1(1)  JA was requested to clarify the scope of "legal representative" as defined in Order 62 rule 1(1), in particular whether it covered ex-legal representatives where a litigant had changed legal representatives in the course of the litigation	<b>JA to follow up</b>
012809 - 012952	Chairman	rule 8(2) to (9)	
012953 - 013055	Chairman	rule 8A	
013056 - 013307	Chairman Administration Mr Ronny TONG	rule 8B	



<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
013308 - 014605	Chairman Mr Ronny TONG Judiciary Administration Administration ALA5	rule 8C - Application for wasted costs order not to be used as a means of intimidation  Members expressed concern about the practical difficulties in monitoring compliance with the rule which might also generate satellite litigations on whether an action was coercing or intimidating  JA was requested to clarify whether there were any sanctions under the rules for breach of rule 8C and to address members' concern about the practical difficulties in monitoring compliance with the rule	<b>JA to follow up</b>
014606 - 014624	Chairman Judiciary Administration	rule 8D	
014625 - 014715	Chairman Judiciary Administration	rule 36	
014716 - 014845	Chairman Judiciary Administration Mr Ronny TONG Administration	Closing remarks	