

立法會
Legislative Council

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LC Paper No. CB(2)2601/07-08
(These minutes have been seen
by the Administration)

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

**Minutes of the ninth meeting
held on Tuesday, 29 April 2008, 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 Miriam LAU Kin-yee, GBS, JP
Hon LI Kwok-ying, MH, JP
Hon Ronny TONG Ka-wah, SC
- 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
- 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 the Administration/Judiciary Administration

(LC Paper No. CB(2)1735/07-08(01) - Paper entitled "Summary Assessment of Costs of Interlocutory Applications" 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

2. The Judiciary Administration was requested to –

Part 14 –Interlocutory Applications and Summary Assessment of Costs

- (a) clarify whether "the Court " stated in Order 62 rule 9A(4) and (5) referred to the taxing master; and if so, whether consideration would be given to replacing the words “the Court” with “taxing master” for the sake of clarity;
- (b) clarify whether the phrase “aggrieved by the order” in Order 62 rule 9A(2) introduced an additional condition for seeking a taxation of costs; and review the need for the phrase, given that it was provided under Order 62 rule 9A(1)(b) that either party had the right to request a taxation of costs where the court had made a provisional assessment of costs;

Part 16 – Witness Statements and Evidence

- (c) confirm whether it was the intention of Order 38 rule 2A(7)(b) to allow a witness to amplify his witness statement (rule 2A(7)(b)(i)) **or** to supplement it with evidence in relation to matters which had arisen since

Action

serving the witness statement (rule 2A(7)(b)(ii)); and if so, whether consideration would be given to replacing the word "and" with the disjunctive "or";

Part 17 – Expert Evidence

- (d) clarify the circumstances under which the court might make an order for the appointment of a single joint expert under Order 38 rule 4A(1), in particular whether such an order could be made if none or only one of the parties intended to appoint an expert witness; and
- (e) explain the operation of Order 38 rule 4A(6) (which empowered the court to set aside an order on the appointment of a single joint expert) and consider setting out clearly in the rule the procedures involved.

II. Any other business

- 3. The Chairman reminded members that the next meeting would be held on Monday, 5 May 2008 at 8:30 am.
- 4. The meeting ended at 12:41 pm.

Council Business Division 2
Legislative Council Secretariat
14 July 2008

**Proceedings of the ninth meeting of the
Subcommittee on Draft Subsidiary Legislation
Relating to the Civil Justice Reform
on Tuesday, 29 April 2008, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000317 - 000518	Chairman	Opening Remarks	
000519 - 001038	Judiciary Administration	<p><u>Part 14 –Interlocutory Applications and Summary Assessment of Costs</u> (Recommendations 88, 89 and 92)</p> <p>Briefing by the Judiciary Administration (JA) on its paper entitled “Summary Assessment of Costs of Interlocutory Applications” [LC Paper No. CB(2)1735/07-08(01)]</p>	
001039 -003330	Chairman Ms Miriam LAU Judiciary Administration Administration	<p>Order 62 rule 9A</p> <p><u>Order for the costs of taxation</u></p> <p>Ms Miriam LAU sought clarification on whether “the Court” referred to in Order 62 rule 9A(4) and (5) referred to the judge who made the provisional summary assessment of costs or the taxing master</p> <p>JA/Administration’s response that -</p> <p>(a) “the Court” was given a wide definition under Order 62 rule 1, encompassing “the High Court or any one or more judges thereof, whether sitting in Court or in chambers, the Registrar or assistant registrar or master”; and</p> <p>(b) it was envisaged that the court's power to make an order for the costs of taxation under Order 62 rule 9A(4) and (5) would normally be exercised by the taxing master, as was the normal practice currently in respect of an order for costs of taxation</p> <p>Ms Miriam LAU’s concern about the lack of objective benchmarks for determining whether the party applying for taxation had done materially better than the provisionally assessed sum under Order 62 rule 9A(4)</p> <p>JA/Administration’s response that -</p> <p>(a) in determining whether the party requesting taxation had done materially better than the provisional summary</p>	

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		<p>assessment of costs, the court would have regard to the factors stated in Order 62 rule 9A(5) and the circumstances of individual cases; and</p> <p>(b) an order for costs of taxation made under rule 9A(4) was subject to appeal</p> <p>JA was requested to clarify whether "the Court" in Order 62 rule 9A(4) and (5) referred to the taxing master; and if so, whether consideration would be given to replacing the words "the Court" with "taxing master" for the sake of clarity</p>	<p>JA to follow up</p>
003331 - 003440	Chairman Judiciary Administration	Order 62 rule 9(4) and (5)	
003441 -003739	Chairman Judiciary Administration Administration	<p>Order 62 rule 9A</p> <p>Members noted that rule 9A(1)(b) allowed either party, as of right, to ask for a taxation of costs in cases where a provisional summary assessment of the costs had been made by the court. In the light of this, the Chairman sought clarification on whether the phrase "aggrieved by the order" in rule 9A(2) introduced an additional condition for seeking a taxation of costs and requested JA to review the need for the phrase</p>	<p>JA to follow up</p>
003740 - 003910	Chairman Administration	Order 62 rule 9B	
003911 - 004024	Chairman Judiciary Administration	Order 62 rule 9C	
004025 - 004110	Chairman Judiciary Administration	Order 62 rule 9D	
004111 - 004415	Chairman Judiciary Administration	<p>Order 62 rule 28A (6) and (7)</p> <p>In response to the view expressed by Professor JUNG Soo Lee and Professor Swati Jhaveri of the Chinese University of Hong Kong in their joint submission to the Subcommittee (LC Paper No. CB(2)1455/07-08(01) that the maximum hourly rate for unrepresented litigants in terms of recovery of costs under rule 28A(3) be increased from \$200 to \$500, JA's response that the Steering Committee did not consider that there was a strong case for adjusting the rate upward as proposed, on account of the following considerations –</p> <p>(a) flexibility had already been built into the rules governing the determination of the costs to be recovered by an unrepresented</p>	

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		<p>litigant. Under Order 62 rule 28A(2), where an unrepresented litigant had suffered pecuniary loss, he could be awarded such costs as if the work had been done by a solicitor on his behalf, subject to a maximum of two-thirds of a solicitor's costs; and</p> <p>(b) where the unrepresented litigant had not suffered any pecuniary loss, the hourly rate of \$200 (taking 8 hours of work a day and 5 days a week) would amount to \$32,000 per month and might be comparable to the monthly remuneration of a trainee solicitor</p>	
004416 - 004722	Chairman Judiciary Administration	<p><u>Part 11 - Vexatious Litigants</u> (Recommendation 69)</p> <p>Order 32A</p> <p>In response to the query raised by members at the last meeting concerning the mode of commencement of proceedings required for an application for a vexatious litigant order, JA's clarification that -</p> <p>(a) under the existing arrangements, an application for a vexatious litigant order, which could only be made by the Secretary for Justice, was commenced by way of an originating summons, and not an originating motion; and</p> <p>(b) the Steering Committee did not see the need to provide a fast-track procedure for such application, as it would affect the right of access to court of the person against whom the order was sought who should at least be given a chance to respond, and hence the same form of commencement of proceedings, i.e. originating summons, should continue to be used upon extension of the right to make an application for a vexatious litigant order to affected persons</p>	
004723 - 010033	Mr Ronny TONG Chairman Judiciary Administration Administration	<p>Mr Ronny TONG reiterated his view expressed at previous meetings that consideration should be given to making provision for a fast-track procedure for cases involving little or no factual disputes</p> <p>The Chairman's view that there should be safeguards in the procedures against the danger of unjustifiably depriving someone of the right of access to the court</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
010034 - 011010	Chairman Judiciary Administration Administration Ms Miriam LAU	<p><u>Part 16 – Witness Statements and Evidence</u> (Recommendation 100)</p> <p>Order 38 rule 2A(7)(b) and (7A)</p> <p>JA was requested to confirm whether it was the intention of Order 38 rule 2A(7)(b) to allow a witness to amplify his witness statement (rule 2A(7)(b)(i)) <i>or</i> to supplement it with evidence in relation to matters which had arisen since serving the witness statement (rule 2A(7)(b)(ii)); and if so, whether consideration would be given to replacing the word "and" with the disjunctive "or"</p>	JA to follow up
011011 - 012814	Chairman Judiciary Administration Mr Ronny TONG Administration Ms Miriam LAU	<p><u>Part 17 – Expert Evidence</u> (Recommendations 102, 103, and 107)</p> <p><u>Evidence by a single joint expert (SJE)</u> (Order 38 rule 4A)</p> <p>Discussion on the workings of Order 38 rule 4A</p> <p>Mr Ronny TONG expressed reservation about the rule. He considered that the court should not be involved in matters concerning engagement of expert witnesses which should best be left to the parties for decision having regard to the needs of their cases</p> <p>JA's response that the Working Party on Civil Justice Reform was aware of the concern that the appointment of SJE in unsuitable cases might give rise to counter-productive effects. At the same time, it also recognised that the parties and the court might benefit significantly from SJE orders made in appropriate cases, particularly those which were of low value and/or low complexity. The Working Party was therefore of the view that the court should be given the power to make SJE orders subject to clear guidelines designed to ensure that the orders were not made in unsuitable cases</p> <p>In response to Mr Ronny TONG's enquiry on rule 4A(6), JA's response that the Court might set aside an order on the appointment of a SJE either on its own motion or on application of the parties</p> <p>JA was requested to explain the operation of Order 38 rule 4A(6) and consider setting out clearly in the rule the procedures involved</p> <p>Ms Miriam LAU expressed concern about rule 4A(2)(b) which provided that the court might make an order for the appointment of a</p>	JA to follow up

Time Marker	Speaker(s)	Subject(s)	Action required
		SJE notwithstanding that a party to the action disagreed with the appointment if the court was satisfied that the disagreement was unreasonable	
012847 -013940	Chairman Ms Miriam LAU Judiciary Administration Administration	JA was requested to clarify the circumstances under which the court might make an order for appointment of a SJE under Order 38 rule 4A(1), in particular whether such an order could be made if none or only one of the parties intended to appoint an expert witness	JA to follow up
013941 - 014027	Chairman Judiciary Administration Administration	Appendix D - Code of conduct for expert witness	
014028 - 014215	Chairman Judiciary Administration	Order 38 rules 35, 35A, 37B, 37C, 41 and 43	
014216 - 014638	Chairman Judiciary Administration Mr Ronny TONG Mr LI Kwok-ying	<u>Part 18 – Case Management Trials</u> (Recommendation 108) Order 35 rule 3A	
014639 - 015152	Chairman Judiciary Administration Administration	<u>Part 19 – Leave to appeal</u> (Recommendations 109, 110 and 112) Order 58 rule 1(1) and (5)	
015153 - 015537	Chairman Judiciary Administration Administration	Order 59 rule 21	
015538 - 015607	Chairman	Closing remarks	