



24<sup>th</sup> March 2008

Judiciary Administration  
Judiciary  
Hong Kong

Dear Hon Margaret Ng SC,

**Subcommittee Meeting on Draft Subsidiary Legislation  
Relating to the Civil Justice Reform (29<sup>th</sup> February 2008)**

With reference to the above and of your letter to us dated 7<sup>th</sup> March 2008, we present our views and comments upon the impact of the draft Rules in terms of justice between represented and unrepresented litigants. We wish to stress that this is not intended to be an exhaustive review of the draft Rules, and that we merely present our views in respect of the sections thereof that have particularly drawn our attention.

**O.53, r.1A**

1. We support the introduction of a definition of judicial review in terms of its scope rather than the available remedies (as per the proposed O.53, r.1A). We would also welcome the use of simplified language to describe the remedies (for example, quashing order versus certiorari). Both of these changes would make judicial review more accessible than is currently the case, in terms of understanding, to potential litigants in person.
2. However, it is important to highlight that the introduction of the definition of the scope of judicial review in the new Rule 1A will not necessarily reduce the amount of litigation or legal costs spent on the question of whether a particular case comes within the scope of O.53. This could impose an undue burden on the limited financial and legal resources of unrepresented litigants as it would involve the use of such resources on issues that do not concern the actual substance of their application for judicial review.
3. We recognise the need to maintain simplicity and flexibility in the definition under the new Rule 1A and therefore the need to maintain a fairly broad and open-textured definition. Accordingly, rather than propose a specific amendment to the definition in Rule 1A, we would like to flag this as an area where unrepresented litigants may require support and advice, beyond any support they may be eligible to receive on the actual substance of their claim.

**O.62, r.28A**

4. We note that unrepresented litigants may face hardship in terms of recovery of costs under the current statutory rate. Under r.28A(3), successful litigants-in-person are allowed



not more than \$200 in costs in respect of the time reasonably spent, in the event that they are unable to show that they have suffered pecuniary loss (in which case the taxing master may allow two-thirds the sum of the costs of a notional solicitor). We note particularly that the rule was made in 1986 – at a time when the recommended hourly rate (for taxation purposes) of a newly admitted solicitor appearing in the High Court was \$800. The recommended hourly rate of the notional solicitor has significantly increased since then.

5. This hardship is further underscored by the fact that while the statutory rate is stipulated at \$200, the taxing master may in fact, in the exercise of his discretion under r.28A(3), allow an hourly rate that is under HK\$200.

6. We would like to propose, as has been suggested elsewhere<sup>1</sup>, that the statutory rate under paragraph (3) be increased to reflect the changes in the High Court Scale of Hourly Rates, from the current rate of \$200 to a proposed rate of \$500.

7. We further propose that the statutory rate of costs recoverable by litigants-in-person be periodically and regularly updated through Practice Directions rather than by way express stipulation; or alternatively, by expressing the statutory rate as a percentage of the hourly rate for a newly qualified solicitor (by reference to the High Court Scale).

We take this opportunity to thank you for considering these comments.

Yours sincerely,

Jung Soo Lee  
Swati Jhaveri

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<sup>1</sup> E. Kelly, 'Litigants in Person in Civil Proceedings: Part 3, Recovering Costs,' (2005) 35 Hong Kong Law Journal, October (at p.324)