

立法會
Legislative Council

LC Paper No. CB(4)1079/13-14
(These minutes have been seen
by the Judiciary Administration
and the Administration)

Ref: CB4/SS/7/13

Subcommittee on District Court Equal Opportunities (Amendment)
Rules 2014

Minutes of the first meeting held on
Wednesday, 30 July 2014, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex

Members present : Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Hon Paul TSE Wai-chun, JP
Hon Dennis KWOK

Members absent : Hon TAM Yiu-chung, GBS, JP
Hon Cyd HO Sau-lan, JP

Public Officers attending : **Agenda item II**

Judiciary Administration

Mr Esmond LEE
Deputy Judiciary Administrator (Development)

Ms Wendy CHEUNG
Assistant Judiciary Administrator (Development)

Department of Justice

Mr Allen LAI
Senior Government Counsel

Ms Carmen CHAN
Acting Senior Government Counsel

Miss Tinny HO
Senior Government Counsel

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (4)5

Staff in attendance : Mr Bonny LOO
Assistant Legal Advisor 3

Ms Shirley TAM
Senior Council Secretary (4)5

Ms Linda MA
Legislative Assistant (4)5

Miss Shanice LOK
Clerical Assistant (4)4

Action

I. Election of Chairman

Mr James TO was elected Chairman of the Subcommittee.

II. Meeting with the Judiciary Administration and the Administration

(L.N. 86 of 2014 -- District Court Equal
Opportunities (Amendment)
Rules 2014

File Ref: JUD DEV 1-145/6 -- Legislative Council Brief
on District Court Equal
Opportunities (Amendment)
Rules 2014

LC Paper No. LS60/13-14 -- Legal Service Division
Report on Subsidiary
Legislation Gazetted on 6
June 2014

- LC Paper No. LS64/13-14 -- Further Report by Legal Service Division on District Court Equal Opportunities (Amendment) Rules 2014 (L.N. 86) Gazetted on 6 June 2014
- LC Paper No. CB(4)967/13-14(01) -- Marked-up copy of the District Court Equal Opportunities (Amendment) Rules 2014 (*Restricted to members*)
- LC Paper No. CB(4)967/13-14(02) -- Letter from the Assistant Legal Adviser to the Judiciary Administration dated 10 June 2014
- LC Paper No. CB(4)967/13-14(03) -- Judiciary Administration's response to the Assistant Legal Adviser's letter
- LC Paper No. CB(4)967/13-14(04) -- Background brief prepared by the Legislative Council Secretariat)

2. The Chairman advised that the first meeting of the Subcommittee originally scheduled for 2 July 2014 was cancelled due to the lack of a quorum.

3. Members noted that Hon Dennis KWOK was invited to move a motion at the Council meeting of 9 July 2014 to extend the scrutiny period of the District Court Equal Opportunities (Amendment) Rules 2014 ("the Amendment Rules") to 8 October 2014. However, as the Council was unable to deal with the motion at the meeting of 9 July 2014, the scrutiny period of the Amendment Rules lapsed at that Council meeting. The Amendment Rules would come into operation on 1 November 2014.

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

Follow-up actions

JA

5. The Subcommittee completed scrutiny of the subsidiary legislation. Members agreed that although no amendments could be made to the Amendment Rules due to expiry of the scrutiny period, the Judiciary Administration ("JA") was invited to provide a written response on the following issues –

- (a) whether the simplified procedures set out under the Amendment Rules should only apply to the adjudication of causes of action under a relevant Ordinance ("EO claims"), or they could also apply to cases involving both EO claims and other causes of action (e.g. negligence at common law) ("mixed claims");
- (b) whether the mixed claims should be dealt with separately so that the EO claims would be handled in accordance with the simplified procedures under the Amendment Rules while the other causes of action would be dealt with in accordance with the existing procedures under the Rules of the District Court (Cap. 336H), and whether the claimant would be allowed to choose between the simplified and existing procedures in making the mixed claims;
- (c) if an action involving mixed claims was commenced by writ in accordance with the existing procedures under Cap. 336H, whether the District Court ("the Court") was empowered (and if so, under which provisions of the Amendment Rules and/or Cap. 336H) to direct at an appropriate juncture -
 - (i) such mixed claims to be proceeded with separately so that the EO claims would be dealt with pursuant to the simplified procedures under the Amendment Rules while the other causes of action would be proceeded with pursuant to the existing procedures under Cap. 336H; or
 - (ii) the whole action involving mixed claims to be proceeded with under the existing procedures in accordance with Cap. 336H; and
- (d) whether the Amendment Rules were capable of catering for circumstances involving parties who were minors, incapacitated or deceased.

Action

III. Any other business

6. The Subcommittee agreed that it would decide whether a further meeting should be held after receipt of the requested written response from JA before reporting its deliberations to the House Committee.

(Post-meeting note: JA's written response was circulated to members on 29 August 2014 vide LC Paper No. CB(4)1042/13-14(02). As no member requested for further meeting, the Subcommittee would report its deliberations to the House Committee in due course.)

7. There being no other business, the meeting ended at 3:30 pm.

Council Business Division 4
Legislative Council Secretariat
29 September 2014

**Proceedings of the first meeting of
the Subcommittee on District Court Equal Opportunities (Amendment) Rules 2014
on Wednesday, 30 July 2014, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Election of Chairman			
000111 – 000146	Mr Albert HO Mr Dennis KWOK Mr James TO	Election of Chairman	
Agenda item II – Meeting with the Judiciary Administration ("JA") and the Administration			
000147– 000426	Chairman	Opening remarks	
000427 – 000937	Chairman JA	Briefing by JA on the District Court Equal Opportunities (Amendment) Rules 2014 ("the Amendment Rules").	
000938 – 001712	Chairman Mr Dennis KWOK JA	<p>In reply to the enquiries of Mr KWOK and the Chairman, JA –</p> <p>(a) advised that the comments made by the Hong Kong Bar Association ("the Bar Association") relating to the legislative amendment exercise in response to the Judiciary's two relevant consultation papers (one about the overall review on adjudication of Equal Opportunities Claims by the District Court ("the Court") and the other specifically about the proposed legislative amendments to the District Court Equal Opportunities Rules (Cap. 336G)) had been fully incorporated in the Amendment Rules;</p> <p>(b) explained that it was difficult to specify the circumstances where the Court might invoke the new rule 4(3) of Cap. 336G which was to confer a discretion on the Court to re-apply aspects of the Rules of the District Court (Cap. 336H) that had been displaced by Part 2 of Cap. 336G, and the Court would consider invoking the new rule 4(3) on a case-by-case basis; and</p> <p>(c) at the first direction hearing held after a "claim form" and a "response form" had been filed with the Court, the Court might, according to the new rule 4(3) of Cap. 336G, "direct that any provision of the District Court Rules (i.e. Cap.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>336H) made under section 72 of the Ordinance (i.e. the District Court Ordinance (Cap. 336)) applies to and in relation to an action or proceeding falling within that jurisdiction (i.e. the jurisdiction given to the Court by virtue of a relevant Ordinance) as if Part 2 had not been enacted".</p>	
<p>001713 – 003543</p>	<p>Chairman Mr Albert HO JA Department of Justice ("DoJ") Assistant Legal Adviser 3 ("ALA3")</p>	<p>Discussion on the procedures for cases involving both equal opportunities claims and other causes of action (e.g. negligence at common law) ("mixed claims"), and whether the Amendment Rules were capable of catering for circumstances involving parties who were minors, incapacitated or deceased.</p> <p>At Chairman and Mr HO's enquiry, ALA3 pointed out that –</p> <p>(a) according to the empowering sections for making the Amendment Rules under the principal Ordinance, i.e. sections 73B to 73E of Cap. 336, the District Court Rules Committee might make rules regulating the practice of the Court in the exercise of its jurisdiction under the relevant Ordinances and the forms of proceedings therein. As such, the empowering sections did not seem to contemplate that the Amendment Rules would also apply to causes of action outside this jurisdiction;</p> <p>(b) rule 5 of the existing Cap. 336G specifically provided that "[w]here the Court determines...that the action is a claim (a) beyond the jurisdiction of the Court under any relevant Ordinance; and (b) within the jurisdiction of the tribunal (i.e. the Labour Tribunal), then the Court shall order that the claim be transferred to the tribunal". However, Cap. 336G contained no similar provision for the treatment of cases related to other causes of action such as negligence at common law;</p> <p>(c) the new rule 4(2) of Cap. 336G provided that the existing procedures set out under Cap. 336H applied to and in relation to an action falling within the jurisdiction under a relevant Ordinance to the extent of any matter for which no provision was made by Part 2 of Cap. 336G (i.e. the simplified procedures); and</p>	<p>JA to follow up as per paragraphs 5(a) to 5(d) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		<p>(d) rule 5 of Order 15 under Cap. 336H provided that "[i]f claims in respect of 2 or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if 2 or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of causes of action or parties... may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient".</p> <p>On the other hand, Mr HO enquired about the factors the Court would take into consideration in directing the use of the existing procedures under Cap. 336H according to the new rule 4(3) of Cap. 336G and whether the Judiciary would provide some guidelines on the factors to be considered by the Court.</p> <p>JA reiterated that the Court would consider invoking the new rule 4(3) of Cap. 336G on a case-by-case basis and thus it would be difficult to set out the factors of consideration in the Amendment Rules. JA stressed that upon the implementation of the Amendment Rules, the simplified procedures should be used in normal circumstances unless the Court directed to use the existing procedures under Cap. 336H in special circumstances. By nature, it would be difficult to spell out such special circumstances.</p>	
Examination of the provisions of the Amendment Rules			
003544 – 004459	Chairman JA Mr Albert HO DoJ	<p>JA briefed members about Cap. 336G as amended by the Amendment Rules (LC Paper No. CB(4)967/13-14(01)).</p> <p><u>New rule 2A – Application to Government</u></p> <p>In reply to the Chairman's enquiry, DoJ confirmed that the four anti-discrimination Ordinances had explicit provisions to indicate that they bound the Government of the Hong Kong Special Administrative Region and did not refer to the offices set up by the Central People's Government in Hong Kong.</p>	
004500 – 005026	Chairman JA Mr Albert HO	<p><u>New rule 4 – Application of other rules</u></p> <p>In reply to Mr HO, JA advised that the Amendment Rules primarily simplified the pleading procedures</p>	

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		under Cap. 336H, and that the rest of Cap. 336H would remain unchanged and applicable to the extent of any matter for which no provision was made by Part 2 of Cap. 336G.	
005027 – 005659	Chairman JA Mr Albert HO	<p><u>New rule 12 – Interested parties may be joined</u></p> <p>The Chairman noted that rule 12(3) stipulated that unless the Court gave leave to the contrary, a copy of the notice of application must be served on the interested person not less than two clear days before the hearing date set out in the notice. He enquired about the reasons for setting such a short notice period.</p> <p>JA replied that it had made reference to the two existing sets of rules providing for similar simplified procedures, i.e. Employees' Compensation (Rules of Court) Rules (Cap. 282B) and Lands Tribunal Rules (Cap. 17A), the notice period under both of which was two clear days before the hearing date. The Chairman suggested JA to consider setting out a longer notice period, say five to seven clear days, while empowering the Court to shorten it where necessary. JA responded that the Court at present had powers to make appropriate arrangements if the interested person(s) could not attend the hearing on the appointed date.</p>	
005700 – 005916	Chairman JA	<p><u>Appendix - Forms</u></p> <p>At Chairman's enquiry, JA explained that in drafting the forms, it had made reference to similar forms in overseas jurisdictions, the requirements and wording of the relevant Ordinances and the Judiciary's operational experiences on the key information needed by the Court to understand a case. It had also consulted stakeholders including the Equal Opportunities Commission which gave support to the Amendment Rules, including the forms.</p>	
005917 – 010035	Chairman JA	JA drew members' attention to the transitional arrangement set out in rule 9 of the Amendment Rules. In short, if a writ had already been issued prior to the commencement of the Amendment Rules, the existing procedures under Cap. 336H should apply unless "the Court", as defined in rule 2 of Cap. 336G, ordered otherwise.	

Time marker	Speaker	Subject(s)	Action required
Agenda item III – Any other business			
010036 – 010120	Chairman JA DoJ Mr Albert HO	Closing remarks	

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Legislative Council Secretariat
29 September 2014