

立法會
Legislative Council

LC Paper No. CB(2)2585/99-00
(These minutes have been seen
by the Administration and
cleared with the Chairman)

Ref : CB2/BC/2/99

Legislative Council
Bills Committee on District Court (Amendment) Bill 1999

Minutes of 10th meeting
held on Wednesday, 5 April 2000 at 8:30 am
in Conference Room B of the Legislative Council Building

Members Present : Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon Mrs Miriam LAU Kin-ye, JP
Hon Jasper TSANG Yok-sing, JP

Members Absent : Hon Ronald ARCULLI, JP
Hon Ambrose LAU Hon-chuen, JP

Public Officers Attending : Ms Emma LAU
Deputy Judiciary Administrator

Ms Miranda CHIU
Deputy Director of Administration

Mr David LEUNG
Assistant Judiciary Administrator

Ms Rosanna LAW
Assistant Director of Administration

Mr J D SCOTT
Senior Assistant Law Draftsman

Miss Vivian FUNG
Senior Government Counsel

Mr CHU Wai-yim
Deputy Registrar, District Court

Mr Ryan CHIU
Assistant Secretary (Administration)

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mrs Eleanor CHOW
Senior Assistant Secretary (2)7

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I. Matters arising

Appeals from District Court : Time for appeals
(LC Paper No. CB(2) 1546/99-00(03))

Members noted that in the light of their comments, the Administration had agreed to retain the period of 14 days within which a person could appeal against a District Court (DC) judge's refusal to grant leave to appeal to the Court of Appeal. Members also noted that the time for appeals from decisions of DC Registrar and masters to a DC Judge would also be 14 days.

Responses to issues raised by the Bills Committee during the clause-by-clause examination
(LC Paper No. CB(2) 1588/99-00(01))

2. Deliberation of the Bills Committee on the paper was summarized below.

Item 3 - Clause 20 (section 32)

3. Assistant Judiciary Administrator (AJA) said that the Administration agreed with the proposal of Messrs. Munro, Claypole and Reeves that employees' compensation paid to the plaintiff should be taken into account in deciding whether the DC should have jurisdiction over a claim. He said that the Administration would move a CSA to amend section 32 to that effect. In response to the Chairman, Deputy Judiciary Administrator (DJA) explained that in the event that the amount of paid employees' compensation was decided after the case had started in the Court of First Instance (CFI), the judge of the CFI had the discretion to decide whether the case, which had fallen within the jurisdictional limit of the DC after taking into account of the paid compensation, should be transferred to the DC.

Item 4 - Clause 39 (section 71A)

4. In response to Mr Albert HO's question on the summary procedure under section 71A, AJA explained that the application was usually made to the court in writing.

Proposed Committee Stage amendments (CSAs)
(LC Paper No. CB(2) 1588/99-00(02))

Clause 9 (section 14)

5. AJA said that as the posts of Deputy Registrar and Assistant Registrar would be filled by judicial officers, the Chinese rendition of the two terms would be changed to 副司法常務官 and 助理司法常務官 respectively. A consequential amendment would also be made to Schedule 1 of the Judicial Officers Recommendation Ordinance (Cap. 92) by adding the judicial posts of Registrar (司法常務官), Deputy Registrar (副司法常務官) and Assistant Registrar (助理司法常務官) of DC.

Clause 20 (section 32(1) and (2))

6. Noting that the proposed CSA which sought to combine proposed section 32(1) and (2) would no longer make reference to "personal injuries" and the fact that the term "personal injuries" was not defined in the High Court Ordinance (HCO), Assistant Legal Adviser (ALA) said that the Administration might wish to consider whether the definition of "personal injuries" should be retained in clause 3 (section 2)

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of the Bill. AJA replied in the positive and pointed out that proposed section 47A(1) had made reference to the term. The Chairman said that she had no strong views on the matter.

Clause 40 (section 72(2))

7. AJA said that given that proposed subsection (f) would be repealed, newly proposed subsection (k) should be shown as "f".

II. Clause by clause examination of the Bill

(LC Paper Nos. CB(2) 420/99-00(02), 672/99-00(03), 1196/99-00 and 1242/99-00(04))

8. The meeting continued clause by clause examination of the Bill commencing from clause 40. Discussion of the Bills Committee was summarized below.

Clause 40 (section 72) - Rules of Court

9. In response to the Chairman, AJA explained that the rules of the DC proposed in section 72 of the Amendment Bill contained less rules than those set out in section 52 of the HCO because some of the HC rules were not applicable to the DC. He further advised members that a CSA would be moved to repeal proposed sections 59A and 72(2)(f) and replaced it with new section 72(f). The wording in new section 72(2)(f) would be modelled on section 54(2)(k) of the HCO. He said that consequential amendments would also be made to proposed section 72(3).

10. The Chairman expressed concern over section 72(4) and (5) in which the term "the Government", instead of "the State" was adopted. The proposed section empowered the Rules Committee to make rules of court which would apply to all proceedings by or against the Government. The Chairman pointed out that pending the adaptation of Crown Proceedings Ordinance (Cap. 300) (CPO), it might not be appropriate for certain provisions of the Bill to adopt the term "the Government". She further queried whether the adoption of "the Government" would have the effect of excluding from the DC's jurisdiction claims by or against Central People's Government (CPG) Offices.

11. Deputy Director of Administration explained that in drafting the Bill, the Administration considered that proposed section 72(4) and (5) should be applicable to proceedings relating to "the Government". This was consistent with the approach adopted for the adaptation of section 72 of the District Court Ordinance (DCO)

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which took place in 1998. She said that the Administration had explained to members at a meeting of the Panel on Administration of Justice and Legal Services (AJLS) that the Administration could either proceed with the introduction of the Bill and leave unamended the provisions relating to proceedings against "the Crown" or "the Governemnt", or defer the Bill till after the CPO had been adapted. The Administration had also explained that it would be in the public interest, and consistent with the policy on the adaptation of laws, to proceed with the introduction of the Bill. The Panel on AJLS did not raise any objection to the approach. She assured members that the Administration would revisit the relevant provisions of the DCO following the adaptation of the CPO.

Adm

12. The Chairman had reservations about the approach adopted by the Administration. She requested the Administration to provide more information on the following -

- (a) the legislative effect of proposed section 72(4) and (5);
- (b) the binding effect of proposed section 72(4) and (5) on the CPG offices; and
- (c) the timetable for adaptation of the CPO.

Clause 40 (section 72B) - Rules as to proof of facts and admission of statements in civil proceedings

Adm

13. Proposed section 72(B) of the Bill empowered the Rules Committee to make rules of court for the means by which particular facts might be proved, the mode in which evidence of the facts might be given and the conditions subject to which oral evidence might be given. Proposed section 72B(3)-(6) specifically dealt with expert evidence. The Chairman was concerned about the power of the court to order the disclosure of privileged documents under proposed section 72B(3)(a). She asked whether the disclosure was confined to expert evidence or any other evidence. Mrs Miriam LAU opined that the disclosure was restricted to expert evidence including counsel's opinion but not general legal advice. The Chairman asked the Administration to explain whether new section 72B(3)-(6) would affect legal privilege, having regard to a recent case of General Mediterranean Holdings S.A. v. Patel and Another [2000]1 WRL 272. DJA undertook to revert to members at the next meeting.

Clause 40 (section 72D) - Orders for interim payment

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14. In response to the Chairman, DJA clarified that section 72D was about interim payment, not interim payment of costs. She said that the procedure for interim payment of costs would be covered in the rules of the DC.

Clause 41 (section 73A) - Amendments of limits of jurisdiction and other amounts

15. AJA explained that section 73A would be amended to the effect that the amounts mentioned in relevant sections might be amended by resolution of the LegCo.

16. Having regard to the increase of jurisdictional limit in the DC would result in many cases including libel cases transferred from the HC to the DC, Mr Albert HO expressed concern that this might deprive litigants from having cases heard and determined by jury. He asked the Administration whether it intended to introduce a jury system to the DC for criminal and certain civil cases. Mrs Miriam LAU supported the views of Mr HO.

17. DJA responded that the issue raised was outside the scope of the Bill, and would require careful consideration as it involved a major change in policy.

18. The Chairman said that it was unusual for libel cases to be heard and determined by jury. She said that litigants who wished to have their cases heard by jury might choose to have their cases tried in the HC. She further advised members that the Bills Committee on Jury (Amendment) Bill 1997 had discussed similar concerns. One of the obstacles in introducing a jury system to the DC was the difficulty in selecting jury with good proficiency in English. Given that the issue was outside the scope of this Bill, the Chairman said that the Panel on AJLS would be a more appropriate forum to discuss the issue. Members agreed.

ALA 19. The meeting completed clause by clause examination of the Bill. The Chairman requested ALA to assist in studying the drafting of the proposed CSAs.

Adm 20. Pointing out that section 46 of the DCO concerning "Infancy no defence" was outdated, Mr Albert HO requested the Administration to consider repealing the section or revising the threshold of \$60,000 for claims in the next legislative exercise.

III. Rules of the DC

(LC Paper Nos. CB(2) 1542/99-00 (01)-(03))

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21. DJA said that the Administration had provided a set of draft Rules of the District Court (RDC) (LC Paper No. CB(2) 1542/99-00(03)) for members' consideration. The draft RDC had incorporated comments made by the Bills Committee. The draft RDC had been considered and given general endorsement by the District Court Rules Committee (DCRC) on 27 March 2000. Further refinements to the drafting were being made and would be considered by the DCRC before it was gazetted for negative vetting by the LegCo. She briefed members on the background and the principle adopted in drafting the new rules which were set out in LC Paper No. CB(2) 1542/99-00(01). To facilitate members' reading of the draft RDC, she said that the Administration had provided a concordance table setting out the similarities and differences between the RHC and the draft RDC (LC Paper No. CB(2) 1542/99-00(02)).

22. The Chairman expressed concern about the timetable for scrutiny of the RDC. DD of Adm advised members that, in order for the RDC to get its passage within the current LegCo session, the latest date for tabling of the RDC would be 24 May 2000. The ideal arrangement was to have the Second Reading debate on the Bill resumed on 10 May 2000 and to gazette the District Court (Amendment) Ordinance 1999 on 19 May 2000. The RDC would then be published in an extraordinary gazette before its tabling at the Council meeting on 24 May 2000. The Clerk advised members that the Bills Committee should aim at completing its work before the Easter holiday and making a report to the House Committee on 28 April 2000.

Concordance table comparing the RDC and RHC
(LC Paper No. CB(2) 1542/99-00(02))

23. AJA explained that under the "RDC" column, the word "Except" was used to illustrate that there were differences between certain rules of the RDC and RHC and the exception was explained in the "Remarks" column of the table. He further advised that there were explanatory notes attached to the concordance table.

24. Members went through the concordance table. Discussion of the Subcommittee was summarized below.

Order 27 - Admissions

25. In response to the Chairman, AJA explained that Order 27 contained amendments consequential upon Order 34 of the RDC which replaced setting down in RHC with pre-trial review. Recommendation of the Kemspter Working Party in this respect was set out in item 6 of the explanatory note.

Order 62, rule 9A - Interim payment of costs

26. DJA advised members that interim payment of costs would be introduced into the High Court. The High Court Rules Committee had studied the proposal and refined the draft which was reflected in the updated set of CSAs in LC Paper No. CB(2) 1588/99-00(02). She said that further refinements might be made to the draft CSAs. The Administration intended to introduce the same rule to the DC, following its introduction to the HC.

Schedule 1 to Order 62 - Certificate of counsel

27. DJA explained that under the existing District Court Civil Procedure (Costs) Rules, counsel's fee would not be allowed on taxation unless the judge had certified the matter to be fit for counsel. The Kempster Working Party recommended that the requirement of certificate of counsel should be retained where the amount recovered was less than \$150,000.

28. Mr Albert HO opined that the proposed threshold was too low, hence inconsistent with the purpose of the Bill to reduce litigation costs. Mrs Miriam LAU echoed the view and said that a party would be obliged to instruct a counsel to represent him, if the other party had done so. Mr Albert HO pointed out that in the circumstances the losing party would be subject to two sets of costs.

29. The Chairman said that the proposal was an improvement over the existing practice where the requirement of certificate of counsel was not subject to dispensation. She said that the purpose of the proposal was to preserve the flexibility of litigants to be represented by counsel. Since the DC would be handling more complicated cases following the increase in jurisdictional limit, litigants should be given the choice to be represented by counsel. Given that it was difficult to determine whether \$150,000 was the most appropriate threshold, she suggested that the proposal should be implemented for the time being and reviewed in due course.

30. DJA said that since the completion of the Kempster Report in mid 1990's, the Chief Justice had appointed a group within Judiciary to review the recommendations of Kempster Working Party. The committee recommended that the threshold of \$150,000 be retained. The DCRC had also endorsed the view that no revision should be made for the time being. She assured members that the Administration would monitor the effect of the reform introduced into the DC and review the jurisdictional limits of the DC, as well as the requirement of certificate of counsel, in two years' time.

31. Mr Albert HO said that he preferred the existing arrangement or a higher threshold for the purpose of reducing litigation costs. He would give the matter further thought when the RDC was introduced into LegCo for negative vetting. The Chairman responded that any change to the level of threshold should only be made after consultation with the legal profession.

Order 78 - High Court proceedings transferred to Court

32. The Chairman noted that there was no transitional provision to provide for cases transfer from the HC to the DC, following the increase of jurisdictional limit of the DC. DJA responded that given that the Bill provided the judge of HC the flexibility to order the transfer of a case at any stage of the proceeding, it was not necessary to have transitional provisions.

Item 11 of Explanatory Notes - Appeals

33. The penultimate paragraph of item 11 stated that "where the District Judge refuses leave to appeal, the appellant can appeal against the refusal to Court of Appeal within 14 days". The Chairman asked the Administration to clarify whether the last sentence was referring to the appellant appealing against the refusal or renewing an application for leave in a higher court. DJA replied that the sentence mentioned therein referred to the appellant appealing against the refusal.

IV. Date of next meeting

34. Members agreed that the next meeting should be held on 19 April 2000 at 4:30 pm.

Legislative Council Secretariat
20 September 2000