

立法會
Legislative Council

LC Paper No. CB(2)2538/99-00
(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 5th meeting
held on Tuesday, 15 February 2000 at 2:30 pm
in Conference Room B of the Legislative Council Building

- Members Present** : Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon Ronald ARCULLI, JP
Hon Jasper TSANG Yok-sing, JP
Hon Mrs Miriam LAU Kin-ye, 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
- Ms Carmen CHU
Senior Government Counsel
- 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

Action
Column

I. Matters arising
(LC Paper Nos. CB(2) 1032/99-00(01) - (04))

List of issues raised by the Bills Committee
(LC Paper Nos. CB(2) 1032/99-00(01))

Adm

The Chairman said that the Administration had yet to respond to many of the issues raised by the Bills Committee at previous meetings. In response, Deputy Judiciary Administrator (DJA) said that the Administration intended to provide three papers relating to the following issues at the next meeting -

- (a) transfer of proceedings between courts;
- (b) proposed section 39 on "Agreement as to jurisdiction"; and
- (c) proceedings for appeal in courts and the caseload and manpower situations in courts having regard to the possible increase in the number of appeal cases to the Court of Appeal as a result of the increase in jurisdictional limits of the District Court (DC).

Adm

2. DJA added that the Administration was preparing a paper on the interim payment of cost in response to the comments made by members at the last meeting. On items 24 and 25 of the List of issues, she referred members to the following documents tabled at the meeting (and issued to members vide LC Paper No. CB(2) 1095/99-00(01)-(03) on 16 February 2000) -

- (a) Extract of the Kempster Report relating to proposed section 39 on "Agreements as to jurisdiction" ;
- (b) Breakdown of the civil cases filed in the Court of First Instance (CFI) of the High Court (HC) in 1999; and
- (c) Breakdown of the estimated civil cases that may be diverted from the CFI to the DC under the new financial limits.

Adm

3. Mrs Miriam LAU said that extracts of the Kempster Report merely contained its recommendation and draft provision in respect of proposed section 39. The Bills Committee would like to know the rationale behind the recommendation to facilitate deliberation. At the request of the Chairman, DJA undertook to provide a copy of the Kempster Report and prepare a comparison table highlighting major differences between recommendations of the Report and provisions in the Bill.

II. Clause by clause examination of the Bill

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

Clause 20 (section 32) – General jurisdiction in actions of contract, quasi-contract and tort

4. Mr Ronald ARCULLI asked why an action for personal injuries was expressly excluded from proposed section 32(1) and then included in proposed section 32(2).

5. Pointing out that the Bill was first drafted sometime in 1996 when the limit for personal injuries was different from the general jurisdictional limit of the DC, Assistant Legal Adviser (ALA) said that it would appear that the Administration had simply changed the figure of jurisdictional limits in the provisions without alteration of the content of the subclauses.

6. Senior Assistant Law Draftsman (SALD) concurred with the view of ALA and said that the original policy intention was to provide different levels for actions for contract and personal injuries. It was then necessary to have two separate subclauses in the Bill.

Adm

7. The Chairman said that given that the jurisdictional limit for all these actions was proposed to be set at the same level, it was no longer necessary to have separate subclauses. She suggested and DJA undertook to reconsider the drafting of proposed section 32(1), (2) and (4).

8. Responding to Mr Albert HO's query that the amount of the plaintiff claims should take into account any set-off that the plaintiff admitted, Assistant Judiciary Administrator (AJA) said that the provision basically followed section 32(2) of the DC Ordinance. In the event that the set-off the plaintiff admitted had resulted in the amount of claims falling below the jurisdictional limits of a court, there was a mechanism to transfer the case to a lower court. He said that proposed section 32(3)(b) in respect of "contributory negligence" that the plaintiff admitted was a new provision.

9. Mrs Miriam LAU pointed out that contributory negligence was often found by a judge at the end of a trial rather than admitted by a plaintiff. AJA responded that section 32(3) only dealt with set-off and contributory negligence admitted by the

plaintiff. The Chairman and Mr Ronald ARCULLI opined that it was very rare for a plaintiff to admit any set-off or contributory negligence in a claim.

10. Mrs Miriam LAU pointed out that section 32(2) of the DC Ordinance required that a set-off had to be admitted by the plaintiff "in the particulars of his claim or demand". She asked for the reason for deleting these words from proposed section 32(3) of the Bill. The Chairman said that it would appear that proposed section 32(3) would allow a plaintiff to admit a set-off in the middle of cross examination. If the plaintiff so admitted, then the case originally dealt with in the CFI might suddenly fall within the jurisdiction of the DC and by virtue of proposed section 44, the CFI would have to make an order, save for good cause, to transfer the case to the DC. She asked whether the change in wording was a matter of policy or drafting instruction. Mr Ronald ARCULLI opined that it could not be a drafting issue. He said that when the admission was made in the particulars of a plaintiff's claim or demand, it was a declaration against his own interest.

11. SALD responded that he was not in a position to answer the Chairman's question because he did not draft the Bill. However, he considered that it was a matter of practice. DJA said that the Administration would reconsider the issue if members were of the view that the existing provision had more benefits over the proposed provision.

12. The Chairman said that the more she went into the Bill, the more she felt that the Bill was not ready. She further said that the original drafting of section 32(2) was very clear. While the proposed section 32(3) gave more flexibility, it also created uncertainties. At the request of the Chairman, DJA undertook to find out the reason for the proposed change.

Adm

13. The Chairman said that Munro Claypole & Reeves Solicitors & Notaries Public Agents for Trade Marks & Patents had made some suggestions relating to proposed section 32(3). Deputy Director of Administration (DD of Adm) responded that the Administration was studying the suggestions and related issues and would revert to members in due course.

Adm

Clause 22 (section 35) – Jurisdiction for recovery of land

14. The Chairman advised members that the Administration had yet to provide information on the percentage of properties having a rateable value of \$240,000, which would cover properties with a capital value of about \$6 million.

15. ALA advised that there was a significant change to the calculation of jurisdiction for recovery of land. Under the existing section 35, jurisdictional limit was calculated not only with reference to the rateable value of the property, but also the annual value of the land. He pointed out that certain land in the New Territories was not subject to rates. Members asked how land not subject to rates would be

dealt with under the Bill.

16. Mrs Miriam LAU asked for the reason for removing "annual value of the land" from the provision. AJA replied that the Kempster Report recommended that "annual value of the land" should be deleted because the term was very similar to the "rateable value of the land" and the latter was readily available. Members noted that the same term was also deleted from proposed sections 36 and 37(4). Mr Ambrose LAU pointed out that the term "annual rent" was also removed from the Bill.

Adm 17. DJA undertook to provide a written reply on members' queries.

Clauses 22 (section 37) – Equity jurisdiction

18. Members expressed concern on proposed section 37(2) relating to equity jurisdiction which provided that –

"The maximum limits in amount or value referred to in subsection (1) for subsections 2(a)-(g) are -

- (i) \$600,000, where proceedings do not involve or relate to land;
- (ii) \$600,000, where the proceedings partly involve or partly relate to land and the part that does not so involve or does not so relate exceeds \$600,000 in amount or value;
- (iii) \$3,000,000, where the proceedings wholly involve or wholly relate to land;
- (iv) \$3,000,000, where the proceedings partly involve or partly relate to land and the part that does not so involve or does not so relate does not exceed \$600,000 in amount or value."

19. ALA advised that items (ii) and (iv) referred to claims that partly involved or related to land. He said that members might wish to study the two provisions in more detail, given that the jurisdiction provided in (ii) was new while (iv) would have the effect of increasing the jurisdictional limits of the DC for proceedings partly involved or related to land to \$3 million.

20. AJA explained that the policy intention was that the limits for equity jurisdiction where land was involved be raised to \$3 million, having regard to comments that the jurisdictional limit of \$600,000 could not reflect the present day value of the properties in Hong Kong.

21. In response to members' request for an example on (ii), AJA said that when the part of the claim not involving land was \$700,000, (ii) would apply. The purpose of (ii) was to prevent litigants from using land as a means to increase the jurisdictional

limit of the DC to \$3 million, where the amount of monetary claims exceeded \$600,000.

22. Mrs Miriam Lau gave an example to illustrate how the difference of a few dollars in the part of proceedings not involving land could result in a drastic difference in the jurisdictional limit. She said that if the part of the proceedings not involving land was \$600,001 in amount or value, the jurisdictional limit of (ii) would apply i.e. \$600,000. However, if the part of the proceedings not involving land was \$599,999 in amount or value, the jurisdictional limit of (iv) would apply i.e. \$3 million.

Adm 23. Mrs Miriam LAU further queried the need for (ii). She said that the part of proceedings that did not involve land and exceeded \$600,000 should be handled in the CFI; and if it did not exceed \$600,000, (iv) would apply. In fact, (ii) would only apply if the plaintiff was ready to recover in the action an amount not exceeding \$600,000. Members generally considered that (ii) was redundant. The Administration agreed to study the implication of deleting (ii) and would revert to members.

24. ALA said that in his view, equity jurisdiction was a standalone issue. One needed not make reference to the jurisdiction set out in sections 32-36 nor the jurisdictional limit of \$600,000 of the DC, as they were not applicable to equity jurisdiction.

Adm 25. At the request of members, AJA undertook to provide a paper to explain the purpose of (ii) and (iv) and to provide example of cases to which the two provisions would apply.

Clause 22 (section 38) – Jurisdiction under the Married Person Status Ordinance

26. ALA sought clarification from the Administration as to whether proposed section 38 intended to provide the DC with the same jurisdiction and powers of the CFI conferred by section 6 of the Married Persons Status Ordinance (Cap. 182). Section 6 referred to disputes between husband and wife as to property.

27. AJA responded that in future, conjugal disputes involving properties could be dealt with either in the DC or the CFI which had unlimited jurisdiction. In response to Mr Albert HO's question, AJA said that the Bill allowed transfer of cases between court by reason of importance or complexity or for any other reason.

Clause 22 (section 39) – Agreements as to jurisdiction

28. Noting that the proposed section 39(1) provided that “the Court has jurisdiction to hear and determine an action or proceeding mentioned in section 32, 33, 35, 36 or 37(1)(c), (d) or (f) without regarding the monetary limits specified if all parties to the action or proceeding agree for the Court to have jurisdiction in the action or

proceeding by a memorandum signed by them or by their respective legal representatives”, Mr Ronald ARCULLI asked how a case would proceed further in the event that Party A and Party B had entered into an agreement to have the case tried in the DC, but Party C was introduced half way through the trial.

29. The Chairman said that if the court decided that Party C should be added to the action and Party C did not agree to the agreement made between Party A and Party B, then the agreement would have fallen through, given that proposed section 39(1) required that “all parties to the action” had to agree for the DC to have jurisdiction in the action. The logical conclusion was for the case to go to the CFI because once the agreement fell through, the DC would have no jurisdiction over the case.

30. DJA drew members' attention to proposed section 39(2) which stated that "the action or proceeding is taken to have been within the jurisdiction of the Court from its commencement if the agreement is entered into after the action or proceeding commenced". Mr Ronald ARCULLI said that he did not understand the operation of the proposed section. If the parties had not entered into an agreement prior to the commencement of an action or proceeding, the DC would not have the jurisdiction over the action or proceeding in the first place.

31. The Chairman asked how the following situation would be dealt with. The parties, on the assumption that the case was within DC jurisdiction, had not entered into an agreement but upon learning that the case was actually outside the jurisdiction of the DC in the middle of the proceedings, disagreed that the case should be continued in the DC. Mr Albert HO asked whether any parties could get out of an agreement in the middle of the proceeding.

32. ALA advised that proposed section 43 stipulated that “the Court may, either of its own motion or on the application of any party (whether or not the party has entered into a jurisdictional agreement under section 39), order the transfer to the CFI of all or part of any action or proceeding within the jurisdiction of the Court”. The Chairman held the view that a party might or might not get out of an agreement, as the Court could order the party to abide by the memorandum signed by the parties concerned.

33. Mr Ronald ARCULLI said that the sentence in the parenthesis of proposed section 43 that "whether or not the party has entered into a jurisdiction agreement" would further complicate the matter. In the example he had quoted earlier on , Party C was not a party to the jurisdictional agreement signed by Party A and Party B. The Chairman said that in the context of Mr ARCULLI's example, proposed section 43 could mean that even though Party A and Party B had an agreement under section 39, the Court could order the transfer of the case to the CFI either on its own motion or on the application of Party C. In other words, transfer could be ordered at different stages of the proceedings.

34. Mr Ronald ARCULLI said that the Administration must address the practical arrangements as a result of implementation of proposed section 39. He said that the questions raised by members were practitioner's questions. He asked whether the Department of Justice had actually looked into this Bill. The Chairman said that she felt uneasy about this Bill. She doubted whether the fundamental and extensive reform proposed in the Bill could work and achieve the objective of reducing litigation costs. Mr ARCULLI said that it was more than an issue of saving money, as the proposal could be doing a serious injustice to those without adequate means as opposed to a rich litigant. The Chairman asked the Administration about the extent of the consultation that had been conducted on the Bill.

35. SALD replied that the Litigation Unit of the Department of Justice was involved in the drafting of the Bill. DD of Adm advised that the draft Bill were sent to the Bar Association and the Law Society for comments in September 1999. The two bodies responded to the Administration in October 1999. AJA supplemented that the Kempster Working Party comprised members of the Bar Association and the Law Society as well as relevant court judges.

36. The Chairman said that the Bar Association and the Law Society should be consulted on proposed section 39. At the request of the Chairman, DJA undertook to explain the operation of proposed section 39 and how to deal with the examples quoted by members.

Clause 22 (section 41) – Saving

37. In response to Mr Albert HO, AJA said that there were provisions in the SCT Ordinance and the Labour Tribunal Ordinance to allow transfer of cases to the DC or HC.

Clause 22 (sections 42 – 44B) - Transfer of proceedings and miscellaneous provisions as to jurisdiction

38. The Chairman said that sections 42-44B relating to proceedings for case transfer would be dealt with at a later stage, pending the Administration's paper on the subject.

Clause 22 (sections 44A – 44E) – Discovery and related procedures

39. DJA said that sections 44A-44E relating to discovery and related procedures were a reproduction of the corresponding sections in the HC Ordinance. She clarified that the provisions about restricting the DC to standard discovery were in the rules of the DC and not in the Bill.

III. Date of next meeting

Action
Column

40. Members agreed that the next two meetings would be held on 29 February 2000 at 10:45 am and on 13 March 2000 at 10:45 am.

41. The meeting ended at 4:16 pm.

Legislative Council Secretariat
17 April 2000