

立法會
Legislative Council

LC Paper No. CB(2)1386/99-00
(These minutes have been seen
by the Administration)

Ref : CB2/BC/2/99

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

Minutes of 3rd meeting
held on Friday, 21 January 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 Jasper TSANG Yok-sing, JP
Hon Mrs Miriam LAU Kin-ye, 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

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

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The Chairman advised that Mr Andrew CHENG had withdrawn from the Bills Committee. The Bills Committee now comprised six members.

I. Confirmation of minutes of meeting

(LC Paper No. CB(2) 895/99-00)

2. The minutes of the meeting held on 22 November 1999 were confirmed.

II. Administration's responses to points raised by the Bills Committee on 22 November 1999 and 21 December 1999

(LC Papers Nos. CB(2) 930/99-00(01), (04) and (05))

List of outstanding issues

(LC Paper No. CB(2) 930/99-00(01))

3. The Chairman welcomed representatives of the Administration to the meeting. She said that to facilitate the work of the Bills Committee, the Administration should provide information papers to members well before the meeting of the Bills Committee. Referring to the list of issues raised by members at the two meetings on 22 November 1999 and 21 December 1999, she asked the Administration when it would be able to respond to the outstanding issues.

4. Deputy Judiciary Administrator (DJA) said that information on the outstanding issues was already in hand and she could give a verbal response if the Bills Committee so wished. The Chairman requested the Administration to provide written response before the next meeting.

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Revised legislative timetable

(LC Paper No. CB(2) 930/99-00(05))

5. Referring to the Administration's paper tabled at the meeting, the Chairman said that the Administration had proposed to advance the legislative timetable. According to the revised schedule, the revised DC rules would be considered by the DC Rules Committee between February to April 2000 and circulated to the Bills Committee for reference. The enactment of the Bill and the submission of the new DC rules to LegCo for negative vetting would take place in May 2000. It was expected that the Bill and the DC rules would take effect in July/August 2000.

Caseload and manpower implications

(LC Paper No. CB(2) 930/99-00(04))

6. Referring to the Administration's paper tabled at the meeting, DJA took members through the paper which set out the projected caseload situations in the High Court (HC), the DC and the Small Claims Tribunal (SCT) respectively upon the implementation of the new jurisdictional limits proposed in the Bill; and the manpower plan and other arrangements being put in place to tie in with the proposed changes in the jurisdictional limits.

7. In response to the Chairman, DJA said that the average caseload figure in the Annex to the paper was based on the 1998/99 caseload. In the HC, there were three main types of cases, namely high court actions, personal injuries and land cases, which could be diverted to the DC. It was expected that about 60% of high court actions and 50% of personal injury cases would be transferred from the HC to the DC when the civil jurisdictional limits of the DC was increased from \$120,000 to \$600,000. Given that the new caseload was a projection, the Administration would closely monitor the actual caseload under the new limits so that adjustments could be made as and when necessary. She said that with the additional manpower from newly created posts and internal redeployment, the Administration was confident that the DC would be able to cope with the increased caseload under the new jurisdictional limits.

8. Noting that the average length of trial days in the HC was about 3-5 days whereas that in the DC was about 1.5 days, Mrs Miriam LAU asked whether the length of trial days for cases transferred from the HC to the DC would be reduced to 1.5 days as a result. DJA responded that the manpower projection was based on the

assumption that the length of trial days for such cases would remain to be 3-5 days.

9. Mrs Miriam LAU asked the Administration to elaborate on the "hidden demand" referred to in paragraph 3(c) of the paper. DJA said that 10% had been used for "hidden demand" in assessing the additional resources required to cope with the increase in jurisdictional limit for the SCT from \$15,000 to \$50,000. "Hidden demand" referred to cases that would otherwise not be filed but for the lower costs in the SCT. As regards caseload projection for the DC, 5% was adopted for "hidden demand". In response to members' enquiries, DJA said that judging from the caseload situation of the SCT since implementation of the new limit on 19 October 1999, the number of additional cases was not too far from the projection but the Judiciary would closely monitor the situation .

10. Having regard to the caseload of the HC in 1999 had increased drastically to 35 000 since 1997 as a result of the economic downturn, Mr TSANG Yok-sing asked whether the caseload projection for the HC was based on the assumption that the caseload after 1999 would continue to increase or otherwise. He pointed out that the caseload before 1997 was about 24 000. Given that Hong Kong's economy had improved, he opined that the projection should be based on the pre-1997 figure rather than the upsurge in caseload after 1997.

11. DJA advised that the number of civil cases in the HC had increased by 45% in 1998 alone over the previous year, though the increase in 1999 over the previous year was less than 10%. Given that the average increase over the past five years was 17%, the projection set out in the Annex was considered to be reasonable.

12. Mr TSANG Yok-sing said that according to paragraph 5 of the paper, at present there were 16 judges, 11 masters and 67 non-judicial staff dealing with civil cases and interlocutory hearings in the HC, and the waiting time of civil cases in 1996, 1997 and 1999 was 154 days, 194 days and 224 days respectively. He enquired about the manpower situation vis-à-vis the caseload situation in the HC in 1996 and 1997. DJA said that the manpower increase in 1997 did not correspond with the increase in workload and hence resulted in a longer waiting time. She undertook to provide the information if available.

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13. Mr Albert HO said that under the existing HC procedure, interlocutory applications in respect of appeals might be made to a HC judge or master. The decision of the master of the HC was appealable with the leave of the judge of the HC by way of rehearing. He considered that the existing procedure in the HC repetitive

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and inefficient. He asked whether the same practice would be adopted by the DC in future and to which party the application for leave to appeal lay. He pointed out that the new procedure to be adopted by the DC would have an impact on the manpower resources of the DC or Court of Appeal (CA) or both.

14. DJA said that as explained in paragraph 13 of the paper on "New Procedural Framework for the DC" (LC Paper No. CB(2) 672/99-00(01)), it was intended that the decision of the master of the DC whether to refer to a judge was non-appealable for cost savings as the decision of the judge on the merits would be appealable. The decision of the master on the merits was appealable with the leave of the judge or that of the CA.

15. The Chairman considered the new procedure for the DC very weird, in that an application for leave to appeal from the decision of the master of DC lay in the judge of the CA whereas that of the master of the HC lay in the judge of the HC. Ironically, the qualification of the master of the DC was lower than that of the master of the HC.

16. Mrs Miriam LAU said that the existing procedure for appeal in the DC was prescribed in section 63(1) of the DC Ordinance. An application for leave must be made to the judge trying the case, or if the judge refused leave, to apply to the CA. The Bill proposed that the section be amended to the effect that an appeal could be made to the CA from any decision of a judge or Registrar. Assistant Legal Adviser (ALA) advised that new section 63(3) proposed that certain applications could be made without leave; which implied that all other appeals required leave.

17. Assistant Judiciary Administrator (AJA) said that new section 63(2) proposed that an appeal was subject to rules of court. Given that the rules of the DC would follow those of the HC, the new rules of the DC would propose that an appeal would require leave from a DC judge or the CA.

18. Mrs Miriam LAU said that the new procedure for the DC was unclear. She asked the Administration to clarify that under the new rules of the DC, whether an appeal could be made to a DC judge or the CA, and if so, the circumstances under which an appeal could be made to the respective parties, and whether an appeal should be made to the judge trying the case or any other judge. She pointed out that with more cases transferred from the HC to the DC, appeal cases would increase correspondingly. She asked the Administration to clarify whether the manpower plan had taken this factor into consideration. DJA said that the proposed manpower plan did not pay regard to the manpower requirement arising from additional appeal applications. She said that the Administration would reconsider the issue and revert

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to members.

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19. Mr Albert HO asked and the Administration undertook to provide information on the jurisdictional limits on counter-claims following the increase in jurisdictional limits in the DC.

III. Clause by clause examination of the Bill

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

20. The Chairman said that to facilitate clause by clause examination, the comparison table prepared by ALA (LC Paper 672/99-00(03)) should be read in conjunction with the Bill and the marked-up copy (LC Paper No. CB(2) 420/99-00(02)). Deliberations of the Bills Committee were summarized below.

Clause 3 (section 2) - Interpretation

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21. AJA advised that to reflect the master system, the Administration would introduce a Committee Stage amendment (CSA) to change the Chinese term of "副司法常務主任" to "副司法常務官". The Chairman requested the Administration to let members have the wording of the relevant CSA in due course.

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22. ALA said that the term "Registrar" was redefined to include a deputy registrar and assistant registrar appointed under section 14. However, temporary deputy registrar and assistant registrar were not included in the definition. The Administration undertook to review the matter.

Clause 6 (section 6) - Disposal of proceedings

23. ALA said that under existing section 6(3), the judge might exercise discretion to hear cases in court or in chamber. The new section 6(3) proposed that the business of the DC should be disposed of in court, unless the matter was authorized to be disposed of in chambers by the DC Ordinance or the rules of court.

24. Mrs Miriam LAU said that the discretion of the judge was reduced under the new arrangement. If the rules of court were silent on the matter, the judge would have no choice but to try the case in court.

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25. The Chairman asked the Administration whether it was the policy intent to reduce the discretion of the judge in this area. The Administration undertook to revert to the Bills Committee on this point.

Clause 7 (sections 7 and 8) - Deputy district judges

26. ALA said that sections 7 and 8 were rearranged under the Bill and there was no substantive difference between the Bill and the DC Ordinance except that proposed section 7(1) appeared to have a wider application than that of the existing section 7(1).

27. Mr TSANG Yok-sing asked whether the power of the Chief Justice (CJ) in appointing deputy District Judges (DDJs) was expanded or restricted under the new section 7. He pointed out that existing section 7(3) provided that the CJ might appoint any fit and proper person to be a DDJ for such period as he might think fit, whereas proposed section 7(1) and (3) set out the conditions for the CJ to appoint DDJs.

28. Senior Assistant Law Draftsman (SALD) opined that the power of the CJ in appointing DDJs under proposed section 7 was wider. Existing section 7 simply referred to the filling of vacancies caused by death or temporary absence, whereas proposed section 7 empowered the CJ to make appointments for a specified case and for a specified period. In addition, proposed section 7(3) empowered the CJ to terminate the appointment of a DDJ at any time, whereas existing section 7(4) was confined to termination of appointments made in accordance with section 7.

29. Mr TSANG disagreed with the Administration's interpretation. He considered that existing section 7(3) gave the CJ a very wide power given that if he considered it desirable, he might appoint any fit and proper person to be a DDJ.

30. AJA assured members that there was no substantive change in policy as far as the proposed section 7 was concerned. The reason for rearranging section 7 was to standardize the appointment of deputy judges across the board. The new section was modelled on the HC Ordinance. He said that in mid 1999, similar provisions on the appointments of deputy judges and magistrates were also included in the relevant ordinances with a view to standardizing the practices on appointing judicial officers. He added that proposed section 7 would allow the CJ the flexibility to appoint DDJs when there were operational needs, for instance, appointing DDJs temporarily to cope with an upsurge of caseload.

Clause 11 (section 20) - Committal for contempt

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31. ALA drew members' attention to the removal of the upper limit of fine of \$5,000 for committal for contempt in section 20(b)(ii). AJA explained that this was one of the recommendations of the Kempster Report. The purpose was to enhance the deterrent effect. Mr Albert HO supplemented that the proposed practice was in line with that of the HC.

Clause 14 (section 26) - Officer illegally demanding fees

32. Mrs Miriam LAU questioned the need for section 26 given that matters relating to officers illegally demanding fees should be covered by the Prevention of Bribery Ordinance (Cap. 201) or referred to ICAC for investigation. The Administration undertook to reconsider the issue.

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Clauses 17-19 (sections 29 - 31)

33. The Chairman asked why the power of a judge to commit a person to prison for rescuing goods and assaulting officers in existing sections 29(b) and 30(b) was abolished.

34. SALD explained that the effect of proposed sections 29(b) and 30(b) would be that a person would have to be convicted first before he could be sentenced to imprisonment. The purpose of the amendment was to narrow the ability of the judge to commit a person to prison.

35. The Chairman pointed out that existing sections 29 and 30 were related to contempt as a result of a person interfering with the process of a court. In the circumstances, the judge was empowered under the law to deal with committal for contempt and to commit the person to prison. It was very different from the new sections which proposed that the person would only be imprisoned upon conviction. Mrs Miriam LAU expressed concern that the power of a bailiff to take an offender into custody was also removed under the new proposal.

36. SALD responded that the power of a bailiff to detain people had been restricted in recent years in accordance with the Bill of Rights Ordinance and the International Covenant on Civil and Political Rights. A bailiff could no longer take an offender into custody with or without a warrant. The power was provided only if there were actual circumstances of an offence. Similar restriction was also imposed on the ability of a judge to make an order.

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37. The Chairman had reservations about the proposed amendments. She said that if a person committed a contempt in the face of a court, the judge could certainly order the bailiff to take the offender into custody. That was an inherent power that should not be removed. She requested the Administration to explain the justifications for and the effect of the proposed amendments.

IV. Submissions

(LC Paper Nos. CB(2) 930/99-00(02) and (03))

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38. The Chairman said that the Hong Kong Bar Association and the Law Society of Hong Kong had been invited to give views on the Administration's paper on "New Procedural Framework for the DC" (LC Paper no. CB92) 672/99-00(01)) and their responses were tabled at the meeting. The Chairman requested and the Administration undertook to provide written responses to these submissions and the one from the Munro Claypole and Reeves Solicitors & Notaries Public Agents for Trade Marks and Patents (LC Paper No. CB92)672/99-00(02)). The Chairman said that the submissions and the Administration's responses would be discussed at a future meeting.

V. Dates of next meetings

39. Members agreed that the next two meeting would be held on 1 February 2000 at 8:30 am and 15 February 2000 at 2:30 pm.

40. The meeting ended at 10:27 am.

Legislative Council Secretariat
14 March 2000