

立法會
Legislative Council

LC Paper No. CB(2)2539/99-00
(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 6th meeting
held on Tuesday, 29 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

Members Absent : 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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I. Matters arising
(LC Paper Nos. CB(2) 1184/99-00(01) & (02))

The Chairman said that the Administration had provided seven papers which were issued to members shortly before the meeting or tabled at the meeting. Since members were not given sufficient time to read the papers, the Chairman suggested and members agreed that the meeting should be curtailed after the Administration had briefly introduced the papers. Members also agreed to schedule another meeting on the following Monday, 6 March 2000 at 2:30 pm to discuss the papers in detail.

Transfer of proceedings between courts
(LC Paper No. CB(2)1242/99-00(03))

2. Deputy Judiciary Administrator (DJA) said that the paper set out the existing legislative arrangement for the transfer of civil proceedings between the District Court (DC) and other courts and the revised arrangement under the Bill. It also explained the proposed transfer of proceedings from the Court of First Instance (CFI) to the DC under proposed section 44. To address members' concern about the absence of a provision similar to the existing section 38(4) to enable the whole

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action to remain in the DC where only the counterclaim was outside the DC jurisdiction, and a saving provision similar to the existing section 38(4), DJA said that the Administration would introduce Committee Stage amendments (CSAs). The Administration was also re-considering the desirability of new section 39 and would revert to members shortly.

Adm

3. In response to the Chairman, DJA said that the Administration would provide a paper setting out all the proposed amendments to the Bill by March 2000. As regards whether a full set of CSAs would be ready by then, DJA said that she had to consult the law draftsman.

Manpower resources, waiting time and caseload of the High Court (HC)
(LC Paper No. CB(2) 1214/99-00(05))

4. DJA said that at a previous meeting, a member had asked about the manpower resources and waiting time of the High Court (HC) vis-à-vis the caseload situation in 1996 and 1997. She explained that the Administration did not have ready statistics on the number of interlocutory hearings, listed trials and taxation bills handled by the HC before the implementation of the case management system in the HC in late 1997. As such, only the total number of cases filed could be provided for 1996 and 1997. The Administration had proposed to reduce manpower resources of the HC upon the commencement of DC's new limits to a level slightly higher than that in 1997, having regard to the factors set out in paragraph 4 of the paper. She said that the Administration would closely monitor the actual distribution of cases upon the implementation of the DC's new limits so that necessary adjustments to the manpower plan could be made if necessary. In response to the Chairman, DJA said that the assumptions used to project caseload and manpower resources were covered in another paper issued to members at a previous meeting (LC Paper No. CB(2) 930/99-00(04)).

Jurisdiction on probate matters
(LC Paper No. CB(2) 1214/99-00(03))

5. DJA said that the Bills Committee had asked the Administration to reconsider members' views that probate actions which were not complex by nature and within the jurisdiction of the DC should be dealt with in the DC. The Administration had reconsidered members' views and compared the pros and cons of the two options, viz for the HC to retain exclusive jurisdiction over probate actions vis-à-vis for the jurisdiction to be split between the HC and the DC. The Administration's considerations were set out in paragraph 6 of the paper. The Administration held the

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view that it was pre-mature to consider conferring on the DC the jurisdiction on probate actions at this stage. Bearing in mind members' views that it might help save litigation costs should the DC be given the jurisdiction to hear certain less contentious probate actions, the Administration would closely monitor the number and nature of probate actions filed with the HC and review its position in the light of any changing circumstances.

Interim payment of costs

(LC Paper No. CB(2) 1214/99-00(02))

6. DJA said that the Bills Committee had requested the Administration to consider introducing the proposal on interim assessment and payment of costs into the DC after the introduction of the relevant rules into the HC. The Administration's paper had set out in detail the existing arrangements and the background leading to the proposal. She said that even under the existing Rules of the HC as applicable to the DC, both the HC and the DC might order costs to be paid forthwith notwithstanding that the proceedings had not been concluded (Order 62 rule 4(1)). The court might also direct that, instead of taxed costs, the receiving party should be entitled to a gross sum so specified in lieu of taxation (Order 62 rule 9(4)(b)). The main purpose of the existing provisions was to discourage frivolous interlocutory applications. However, in practice, Order 62 rule 4(1) was seldom invoked because its procedure might become cumbersome and might increase costs. The court occasionally exercised its power under Order 64 rule (9)(4)(b). Separate taxation in the interim had been said to be a waste of judicial time and resources.

7. DJA further said that in order to address the concerns raised on the two rules, it had been proposed that the court should have the power to order interim payment of costs without taxation. The proposal and its benefits had been thoroughly considered and debated in the Civil Court Users' Committee (CCUC) since April 1998. Both the Bar Association and the Law Society supported the proposals with strong reasons. The HC civil judges also warmly welcomed it. The CCUC unanimously recommended in early 1999 that the Rules of HC should be amended to give effect to the proposal. At its recent meeting held on 26 February 2000, the CCUC continued to support the proposal and expressed general agreement with the draft provisions. The Administration's plan was to submit the revised Rules of HC to the LegCo for negative vetting by April 2000.

8. As regards members' concerns that the proposal might be a deterrent to the less resourceful party, DJA said that the Administration had provided its responses in paragraph 14 of the paper. In gist, the proposal was intended to be used to deter

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unmeritorious interlocutory applications. It would also protect a less resourceful party. A less resourceful party faced with unwarranted interlocutory applications would be able to immediately recover at least part of its costs incurred for those applications. The Administration intended to introduce the proposal to both the HC and the DC by mid-2000.

Standard discovery

(LC Paper No. CB(2) 1214/99-00(01))

9. DJA said that the Administration considered that the proposed procedure to restrict discovery of documents in the DC to standard discovery was a good reform as it sought to tackle the problems of the present system of discovery. However, having considered members' views, the Administration had decided not to pursue introduction of the proposed procedures into the DC for the time being. This would allow more time for the Administration to consult all concerned parties on the proposal.

Letter from Munro, Claypole & Reeves (MCR)

(LC Paper NO. CB(2) 1214/99-00(04))

10. Deputy director of Administration (DD of Adm) said that MCR had suggested that consideration should be given to amending proposed section 32(3), so that paid employees' compensation should be taken into account in deciding whether the DC should have jurisdiction over, for example, cases where there was a fairly large payments of employees' compensation leaving a small common law claim. The Administration had no objection in principle to the suggestion. However, the amendment suggested by MCR might not adequately serve the purpose of putting the matter beyond doubt. To ensure that the desired objectives could be achieved, the Administration was, in consultation with the Department of Justice, looking into other provisions in the Ordinance with the view to putting forward necessary amendments to the relevant sections. DD of Adm added that the proposed amendment would be provided to the Bills Committee for consideration at the meeting on 13 March 2000. The Administration would also be seeking the views of the legal profession on the proposed amendments.

Adm

11. DD of Adm said that MCR also suggested that consideration be given to providing in section 32(3)(b) that any contributory negligence determined by the court or agreed between the parties should be taken into account in addition to any contributory negligence admitted by the plaintiff. The Administration had examined the proposal and came to the view that proposed section 32(3)(b) was sufficient to

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cover the situation where the parties agreed on the issue of contributory negligence before the commencement of an action in the DC. As regards contributory negligence determined by the court, it was highly unlikely that the court would have determined contributory negligence when the plaintiff was choosing which court to commence the proceedings. The Administration therefore did not consider it necessary to introduce an amendment to proposed section 32(3)(b).

Comparison table on provisions in the Bill, the Bill prepared by the Kempster Working Party, the DC Ordinance and the HC Ordinance
(LC Paper No. CB(2)1242/99-00(04))

12. DD of Adm said that members had requested the Administration to prepare a table comparing the differences between provisions in the Bill, the Bill prepared by the Kempster Working Party, the DC Ordinance and the HC Ordinance. To tie in with the progress of clause by clause examination of the Bills Committee, the second part of the table (commencing at proposed section 48) was prepared first and tabled at the meeting. The first part of the table (covering sections 1-47 which had already been scrutinized by members) was under preparation and would be provided to members once available.

13. DD of Adm said that at the bottom of the table was the "Remarks" section which explained the background of the proposed amendments. She also drew members' attention to the fact that the majority of the proposed amendments in the Bill followed the recommendations of the Kemspter Working Party, except in the following four areas where substantive changes had been introduced to the Bill –

- (a) the addition of "temporary deputy registrar" and "temporary assistant registrar" in proposed section 14;
- (b) new financial jurisdictional limits of the DC in various provisions;
- (c) review of orders made in the absence of parties in proposed section 53; and
- (d) rules as to proof of facts and admissions of statements in civil proceedings in proposed section 72B.

DD of Adm said that these changes would be explained in more detail during the clause-by-clause examination.

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Other outstanding issues

14. DJA advised that the Administration was preparing two papers on the following—

- (a) the revised mechanism of appeals from the DC and implications on the workload of the Court of Appeal; and
- (b) queries raised by members during the clause by clause examination.

15. The meeting ended at 11:28 am.

Legislative Council Secretariat
17 April 2000