

For discussion on
21 December 1999

**Panel on Administration of Justice and Legal Services
Of the Legislative Council**

Legal Representation in Labour Tribunal

Purpose

This paper sets out the existing arrangement with regard to operation of the Labour Tribunal (the Tribunal), and the Administration's comments on the Honourable Andrew Cheng's proposal to provide the presiding officer of the Tribunal with the discretion to allow legal representation for both parties in complex cases.

Existing Arrangement with regard to Legal Representation

2. The Labour Tribunal was established in 1973 to provide an expeditious, inexpensive and informal means for settling some of the more common types of disputes between employers and employees. It has unlimited jurisdiction to hear employment claims exceeding \$8,000. Sections 20(1) and 23(2) of the Labour Tribunal Ordinance (the Ordinance) provide that a hearing of the Tribunal should be conducted in an informal manner, and that no barrister or solicitor, unless acting on his or her behalf as a claimant or a defendant, has a right of audience before the Tribunal.

3. On the other hand, Section 23(1)(d) of the Ordinance provides that an officer or servant of an unincorporated or incorporated company or a member of a partnership, if the company or partnership is a party, shall have a right of audience before the Tribunal.

Comments on the Hon Andrew Cheng's Proposal

4. We are of the view that the introduction of legal representation in the

Labour Tribunal would not be desirable given that the objective of establishing the Tribunal is to provide an inexpensive, informal, swift and flexible means of dealing with employment-related claims. In the judgment in *Century City Holdings Ltd v. Eddie Siu* (LT Appeal No. 16/94), a qualified, but not practising, solicitor may appear in the capacity of an officer or servant for a limited company who is a party to the proceedings before the Tribunal. As legal representation is not allowed for the employee, there is a concern that such arrangement would be unfair to the employee concerned.

5. There exists a mechanism under the existing legislation to address the concern. Should the Presiding Officer of the Tribunal consider that the matter before the Tribunal involved some complications or that the employee would be at a disadvantage in not being able to deal with the matter himself, the Presiding Officer could, in accordance with Sections 10(1) and (2) of the Ordinance, decline jurisdiction over a certain case and transfer the case to a higher court, i.e. the District Court or the High Court, so that the employee could either instruct his own lawyer or apply for legal aid. The Judiciary has advised that this is indeed the practice adopted in the Labour Tribunal, and that the practice will continue.

6. It should also be noted that, although not explicitly set out the Ordinance, all Presiding Officers of the Labour Tribunal are legally qualified. They are able to assist self-represented litigants during the course of a hearing, to ensure that such litigants receive a fair hearing, and to decide that a case should be transferred to a higher court if the circumstances of the case so dictate. The Judiciary has advised that the practice of appointing legally qualified Presiding Officers to the Tribunal will continue.

Conclusion

7. We consider that both the existing practice adopted by the Judiciary and the existing legislation operate satisfactorily. We do not consider it desirable to allow legal representation in the Labour Tribunal.

Administrative Wing
Chief Secretary for Administration's Office
December 1999