

立法會
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Panels on Administration of Justice and Legal Services and Manpower

**Minutes of joint meeting
held on Tuesday, 6 May 2003 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Members of Panel on Administration of Justice and Legal Services

Hon Margaret NG (Chairman)
Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon James TO Kun-sun
* Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP

Members of Panel on Manpower

Hon LAU Chin-shek, JP (Chairman)
Hon CHAN Kwok-keung (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon Cyd HO Sau-lan
Hon LEE Cheuk-yan
Hon CHEUNG Man-kwong
Hon YEUNG Yiu-chung, BBS
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon LI Fung-ying, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon LEUNG Fu-wah, MH, JP

Members absent : Members of Panel on Administration of Justice and Legal Services

Hon CHAN Kam-lam, JP
Hon Miriam LAU Kin-ye, JP
Hon TAM Yiu-chung, GBS, JP

Members of Panel on Manpower

Dr Hon LUI Ming-wah, JP
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon Michael MAK Kwok-fung
Hon Frederick FUNG Kin-kee

* Also a member of Panel on Manpower

Public officers attending : Item II

Mr Wilfred TSUI
Judiciary Administrator

Mr Augustine L S CHENG
Deputy Judiciary Administrator (Operations)

Mr LAM Chui-kok
Acting Registrar, Labour Tribunal

Attendance by invitation : Hong Kong & Kowloon Trades Union Council

Mr LEE Kwok-keung
Chairman

Mr LAW Tai-chi
Committee Member

The Hong Kong Federation of Trade Unions

Mr FUNG Kin-cho
Secretary
Hong Kong Construction Industry Employees
General Unions

Mr IP Wai-ming
Executive Secretary
The Hong Kong Federation of Trade Unions

The Federation of HK & Kowloon Labour Unions

Ms NG Wai-yee
Director of Labour Rights

Mr WAN Sung-kwong
Deputy Director of Labour Rights

Hong Kong Confederation of Trade Unions

Ms CHEUNG Lai-ha
Vice-Chairperson

Mr CHAN King-chi
Organizing Secretary

Neighbourhood and Worker's Service Centre

Mr SETO Chun-pong

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

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mr Paul WOO
Senior Assistant Secretary (2)3

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I. Election of Chairman

Miss Margaret NG was elected Chairman of the joint meeting.

II. Operation of the Labour Tribunal

(LC Paper Nos. CB(2)1932/02-03(01); 1931/02-03(01) to (03); 1940/02-03(01) & (02); and 1977/02-03(01))

2. The Chairman welcomed the deputations to attend the meeting. At the invitation of the Chairman, the deputations made verbal representations on

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their submissions on the operation of the Labour Tribunal (LT). A summary of the views of the deputations is at **Annex**.

3. The Chairman invited questions from members and the Judiciary Administrator (JA) to respond.

Waiting times

4. In reply to members, JA advised that in 2000, LT had set a target of 30 days for the period from the date of appointment to the date of filing a claim with the Tribunal. Since then, the waiting period was shortened considerably. He added that for the 12 000 cases filed with LT in 2002, the average period required from appointment to filing of the case was 12 days, and that from filing of the case to callover hearing was 24 days. For the relatively more complex cases which needed to proceed to trial, the average period taken from appointment to conclusion of the case was 56 days. For the most complicated cases, the average period was 128 days. JA further said that for cases which had proceeded to the trial stage, in average, 2.1 hearings were required for such cases to be concluded.

5. Mr LEE Cheuk-yan said that the average figures provided by JA above did not accurately reflect the extent of the problem of long waiting time. He suggested that the Judiciary should categorise the cases handled by LT according to -

- (a) the actual time taken (breakdown in months) for the cases to be finally disposed of; and
- (b) the actual number of trials required for the cases to be concluded.

Adm Mr LEE Cheuk-yan requested the Judiciary Administration to provide the breakdown of the cases for members' reference.

Adm 6. Mr Martin LEE also requested the Judiciary Administration to provide the 10 worst cases in the past three years in terms of the length of time taken for such cases to be finally disposed of.

7. Ms Emily LAU pointed out that the Legislative Council Public Accounts Committee (PAC), in considering the Director of Audit's Report No. 34 published in February 2000, had commented on the practice adopted by LT of recording the cases initially in an appointment register. Under such practice, cases entered in the register were not considered as having been formally filed in accordance with the Labour Tribunal Ordinance. When the Registrar of LT found available time slots within the following 30 days for hearing the cases, he would then ask the claimants to complete the formality for filing of their cases in the Tribunal. As noted by the Director of Audit and

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PAC, the use of the appointment register ensured that all cases would meet the statutory requirement that LT should hear a claim not later than 30 days from the date of filing of claim. In its report published in June 2000, PAC had criticised the use of the appointment register as a means to circumvent the 30-day time limit.

8. JA responded that he had previously explained to PAC that the use of the appointment register provided a mechanism for assisting claimants in filing their claims at the earliest opportunity, and facilitated mobilisation of judicial resources to cope with any sudden increase in caseload of LT. The Judiciary considered that there was a practical need to continue the arrangement.

9. Ms Emily LAU opined that the correct approach to solve the problem of backlog and long waiting time was to provide additional resources to LT and increase the number of courts, where appropriate, to handle the caseload.

10. Ms LI Fung-ying expressed concern that the anticipated increase in the caseload of LT would worsen the situation of long waiting times. JA said that the Chief Justice (CJ) had explained that the Judiciary, same as other executive departments, was subject to the existing financial constraints. However, CJ had assured that regardless of the impact, the quality of justice would not be sacrificed. JA further said that the increase in caseload might create pressure on LT's resources, particularly on the services provided by the supporting staff. Nevertheless, the Judiciary would make its best efforts to minimise the impact on waiting times through identifying opportunities to improve efficiency, e.g. flexible deployment of judicial resources and support staff.

Role of Presiding Officers (POs) and Tribunal Officers (TOs)

11. Referring to the views expressed by the depositions that POs and TOs of LT often pressurised the parties to come to a settlement instead of conducting adjudication on the case, JA said that this was far from the truth. He said that as LT was required by law to operate in an informal and inquisitorial procedure, and the parties were not legally represented in the proceedings, PO was duty bound to explain the law, the procedure and evidence and the issues involved to the parties concerned to help them understand the nature of their dispute. PO would also have to make the parties aware of the possible consequences of continuing the litigation, and the time and cost implications of appeals. In the course of so doing, the impression might be wrongly perceived by the parties that PO was trying to compel the parties into a settlement.

12. Mr LEUNG Fu-wah said that when getting both parties to come to an agreement, POs should act cautiously to avoid the perception that they were compelling the parties to settle their case against their wish. Mr Albert HO added that POs should be mindful of their behaviour and attitude in handling the cases. He said that if they spoke to the litigants in an outrageous or

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unsympathetic manner, this could easily give rise to the perception that they were biased against or acting in favour of certain parties, particularly where the litigants did not have the benefit of legal representation.

13. JA assured members that POs fully appreciated that their duty was to dispose of a claim in the interest of justice.

14. In reply to members' enquiry about the role played by TOs in conciliation, JA explained that TOs had a duty under the law to assist parties to arrive at an amicable settlement where appropriate. The Labour Tribunal Ordinance provided that TOs should conduct conciliation with a view to achieving settlement of a claim. Under section 15(1) of the Ordinance, the Tribunal should not hear a claim until a certificate signed by a TO or an authorised officer was filed or produced to the effect that -

- (a) one or more of the parties had refused to take part in conciliation;
- (b) conciliation had been attempted but no settlement had been reached;
- (c) conciliation was unlikely to result in a settlement being reached;
or
- (d) conciliation might prejudice the interests of a party.

15. Ms Audrey EU opined that where an attempt of TO to conciliate had failed and the case had to proceed to trial, PO should conduct adjudication rather than engaging in further conciliation.

16. Ms Audrey EU further enquired whether interviews conducted by TOs could be audio-recorded. JA replied that as TOs handled a large number of interviews on a daily basis, there would be significant resource implications if the interviews were to be recorded. He further said that complaints against TOs were rare. He pointed out that in 2002, with 12 000 cases handled by LT, 17 complaints against TOs were received. On the other hand, 45 letters of commendation were received. JA opined that he saw no immediate need for recording the interviews conducted by TOs.

17. Mr LEUNG Fu-wah suggested that more intensified training and refresher courses should be provided to POs and TOs to enable them to acquire better knowledge and understanding of the law and labour relations matters.

Complaints mechanism

18. On members' enquiry about the channel for complaint against POs and TOs, JA advised that complaints against POs could be directed to the Chief

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Magistrate for necessary action, while complaints against TOs or other staff members of LT could be channelled through him or other senior members of the Judiciary Administration. He further advised members that the Judiciary had prepared an information leaflet on the mechanism for handling complaints against judges and judicial officers and the proper channels for lodging complaints. The leaflet would be made available to the public in about two weeks' time.

19. Ms Emily LAU said that she was concerned about allegations that judgments delivered by LT were biased in favour of the employers, particularly the big enterprises. She said that these allegations were signs of doubt that the existing judicial system could not uphold fairness and justice. She opined that the Judiciary should treat the matter seriously.

Arrangements for callover hearings and filing of claims

20. Referring to the existing arrangement under which different parties were required to report to LT at 9:30 am for purposes of attending callover hearings and filing of claims, Ms Audrey EU and Mr LEUNG Fu-wah opined that the Judiciary should arrange different time slots for dealing with such matters so that the parties would not have to wait for a long time before their cases were attended to.

21. JA explained that depending on the nature of individual cases, some callover hearings or filing of claims might be finished within a short time. Hence, the existing practice of inviting the parties to report to the Tribunal at the same time early in the morning was to minimise idle time and achieve maximum use of judicial resources. JA noted the proposal to schedule the appointments at different time slots and undertook to review the present arrangement.

Adm

Pre-trial mention

22. In response to Mr LEE Cheuk-yan, JA said that PO, after making enquiries at the callover hearing as to the readiness of the claim to proceed to trial, might set down the matter for trial in a trial court right away if the case was simple. However, if the matter was not straightforward and required the parties to provide more evidence, PO would set it down for pre-trial mention. JA explained that the purpose of pre-trial mention was to examine any further evidence or documents to decide whether the matter was ready to proceed to the trial stage. As certain legal issues and matters relating to evidence could be sorted out in pre-trial mention, the trial proceedings could be expedited.

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Standardisation of forms and transmission of information between the Labour Department (LD) and LT

Adm 23. In response to the views expressed by the deputations, JA said that the Judiciary would discuss with LD on measures to facilitate efficient transmission of information and documents between LD and LT, hence relieving the claimants from having to provide duplicated information and documents to both LD and LT. He added that the possibility of standardising forms used by LD and LT and transmission of information through electronic means would be considered.

Night courts

Adm 24. Ms Audrey EU opined that although night sittings of LT had been suspended with effect from February 2003, the Judiciary should review the need for resuming the night courts as proposed by the deputations.

Safeguard against witnesses collaborating in giving evidence

Adm 25. Mr LEUNG Fu-wah and Ms Audrey EU supported a deputation's proposal that to minimise the chance of witnesses informing each other in the course of the proceedings, witnesses should not be allowed to sit in the courtroom when the proceedings were in progress. The Chairman said that the Judiciary might consider promulgating rules to put this into practice.

Costs

26. Mr Albert HO asked how costs awarded by LT were taxed. JA advised that under section 28 of the Labour Tribunal Ordinance, the Tribunal might award costs and expenses to a party which might include -

- (a) any reasonable expense necessarily incurred and any loss of salary or wages suffered by that party; and
- (b) any reasonable sum paid to a witness for the expenses necessarily incurred and any loss of salary or wages suffered by him,

in attending a hearing of the Tribunal or in being interviewed by a TO.

Adm 27. Mr Albert HO expressed concern that the method of calculation of costs created tremendous financial burden on the employees. He opined that the possibility of amending the law, e.g. to cap the maximum limit of costs payable by the employees, should be considered.

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Offset of severance payment and long service payment against retirement scheme/mandatory provident fund scheme benefits

28. JA explained that the statutory provisions relating to the above matters were laid down in sections 31I, 31IA, 31Y and 31YAA of the Employment Ordinance. In adjudicating claims relating to such matters, the Tribunal had to act according to the statutory requirements and would therefore request the claimants to provide the relevant records for verification.

The way forward

29. The Chairman requested the Administration to respond to the views and suggestions of the deputations and the issues raised by members. Members agreed that another joint meeting should be held to continue discussion on the subject matter with a view to identifying relevant issues for the purpose of a comprehensive review of the operation of the Labour Tribunal.

30. Mr Kenneth TING Woo-shou suggested that representatives from the Administration responsible for labour issues and major business/employers' associations should also be invited to attend the next joint meeting.

(Post-meeting note - With the agreement of the two Panel Chairmen, the next joint meeting was scheduled for 19 June 2003 at 10:45 am.)

31. The meeting ended at 6:50 pm.

Council Business Division 2
Legislative Council Secretariat
18 June 2003

**Joint meeting of Panel on Administration of Justice and Legal Services and
Panel on Manpower on 6 May 2003**

**Summary of views expressed by deputations on
Operation of the Labour Tribunal**

Organisations (Paper No. of submission)	Views and suggestions
(1) Waiting times	
Hong Kong and Kowloon Trades Union Council (<i>LC Paper No. CB(2)1931/02-03(01)</i>)	- The law should be amended to provide that cases should be disposed of by the Labour Tribunal (LT) within two months after filing of claim.
The Hong Kong Federation of Trade Unions (<i>LC Paper No. CB(2)1940/02-03(01)</i>)	- Cases should be disposed of within three months from date of filing of claim. To achieve this end, the manpower resources of LT should be increased.
The Federation of Hong Kong & Kowloon Labour Unions (<i>LC Paper No. CB(2)1931/02-03(02)</i>)	- The period from date of filing of claim to hearing should not exceed three weeks.
Hong Kong Confederation of Trade Unions (<i>LC Paper No. CB(2)1931/02-03(03)</i>)	- The claimants were very often forced to enter into agreement with their employers or withdraw their claims because of the long period of time required for the case to proceed to trial. - The number of Presiding Officers (POs) and Tribunal Officers (TOs) should be increased. Cases should be disposed of within two months.

(2) Handling of cases by POs and TOs	
Hong Kong and Kowloon Trades Union Council	<ul style="list-style-type: none">- POs and TOs should not duplicate the work of conciliation which was performed by the Labour Department (LD); and- As the claimants were not legally represented, they were prone to being influenced by POs in reaching agreement with the employers, or withdrawing their claims, without fully knowing their statutory rights and entitlements.
The Hong Kong Federation of Trade Unions	<ul style="list-style-type: none">- Over-emphasis on conciliation had resulted in delay in adjudication and disposal of cases by LT; and- The manner and attitude of POs and TOs towards the claimants should be improved.
The Federation of Hong Kong & Kowloon Labour Unions	<ul style="list-style-type: none">- Settlement by conciliation usually resulted in the claimants not getting their full entitlement to the compensation. POs and TOs should be constantly reminded of their duty to handle cases fairly and impartially.
Hong Kong Confederation of Trade Unions	<ul style="list-style-type: none">- POs often resorted to conciliation and compelled claimants to agree on settlement terms which were less favourable than their legal entitlements;- POs were biased in favour of the employers, especially the big enterprises; and- The arrangement for engaging different POs to handle the same case at different stages of trial created confusion to the claimants.
Neighbourhood and Worker's Service Centre (<i>LC Paper No. CB(2)1940/02-03(02)</i>)	<ul style="list-style-type: none">- The claimants were forced to compromise on their claims in the course of conciliation. In the absence of proper legal advice on their rights and entitlements, their interests were prejudiced; and

	<ul style="list-style-type: none">- TOs had failed to provide sufficient assistance to claimants, e.g. in preparing evidence and statement of claims.
(3) Complaints mechanism	
Hong Kong Confederation of Trade Unions	<ul style="list-style-type: none">- A complaints mechanism involving the participation of trade unions should be established to deal with complaints against POs and TOs.
(4) Callover hearings and filing of claims	
Hong Kong Confederation of Trade Unions	<ul style="list-style-type: none">- The existing practice of inviting different claimants to report to LT at the same time in the morning for callover hearings or filing of claims created inconvenience to the claimants. It was suggested that different time slots should be arranged for dealing with such matters.
Neighbourhood and Worker's Service Centre	<ul style="list-style-type: none">- The existing arrangement for claimants to report to LT at the same time in the morning should be improved as some claimants had to wait for a long time before their cases were attended to. To reduce inconvenience, the claimants should be advised to turn up according to a time schedule specifying the appointments.
(5) Standardisation of forms and efficient transmission of information between LD and LT	
Hong Kong & Kowloon Trades Union Council	<ul style="list-style-type: none">- Forms containing information used by LD and LT should be standardised; and- Measures should be introduced to facilitate efficient transmission of information between LD and LT.
The Hong Kong Federation of Trade Unions	<ul style="list-style-type: none">- Provision of duplicated documents and information to LD and LT should be avoided to save time of the claimants; and

	- Measures should be introduced to facilitate efficient transmission of information between LD and LT.
The Federation of Hong Kong & Kowloon Labour Unions	- Provision of duplicated documents and information to LD and LT should be avoided.
(6) Day courts	
The Federation of Hong Kong & Kowloon Labour Unions	- All the 13 day courts should preferably be situated in the same location.
(7) Night courts	
The Federation of Hong Kong & Kowloon Labour Unions	- The effectiveness of night courts was limited in view of the short operating hours.
Neighbourhood and Worker's Service Centre	- The night courts should be resumed.
(8) Costs	
Hong Kong and Kowloon Trades Union Council	- Employees who were successful in pursuing their claims should be awarded costs.
The Hong Kong Federation of Trade Unions	- Pursuing claims at LT was costly to the employees, in terms of the time spent and loss of wages which might result. The costs which a claimant might be awarded were far from enough to compensate for the losses incurred.
(9) Others	
Hong Kong and Kowloon Trades Union Council	- Two deputy POs, one nominated by employers' associations and one nominated by trade unions, should assist the PO in the trial;

	<ul style="list-style-type: none">- Duty lawyers and trade union representatives should be present at LT to provide assistance and free legal advice to the claimants; and- The penalty imposed on employers who defaulted payments to the employees should be increased.
The Hong Kong Federation of Trade Unions	<ul style="list-style-type: none">- Heavy penalty should be imposed on employers who repeatedly failed to provide documentary evidence without reasonable excuse; and- Training of staff members of LT should be strengthened.
The Federation of Hong Kong & Kowloon Labour Unions	<ul style="list-style-type: none">- The financial jurisdictional limit of the Minor Employment Claims Adjudication Board of LD should be increased to \$10,000 or \$15,000. This would relieve part of the workload of LT;- The jurisdiction of LT should be extended to cover cases relating to mandatory provident fund benefits; and- There should be regular opportunities for exchange of views between LT and trade unions on labour matters and issues relating to the operation of LT.
Hong Kong Confederation of Trade Unions	<ul style="list-style-type: none">- In cases where the employer appealed to a higher court from the decision of LT, the employee could apply for legal aid and the means test for legal aid should be waived in respect of the application;- At present, workers involved in claims for severance payment or long service payment had to spend considerable time and effort in getting the record of their provident fund benefits and to produce the record to LT for verification. Assistance should be provided to the workers in obtaining such records; and

	<ul style="list-style-type: none">- Training of POs and TOs should be strengthened.
Neighbourhood and Worker's Service Centre	<ul style="list-style-type: none">- Witnesses should not be allowed to stay inside the courtroom to observe the process of proceedings; and- Enhanced statutory power should be provided to LT to enforce its awards in the event of employers defaulting payment.