

立法會
Legislative Council

Ref : CB2/BC/7/06

LC Paper No. CB(2)2625/06-07
These minutes have been seen by
the Administration)

**Bills Committee on
Civil Justice (Miscellaneous Amendments) Bill 2007**

**Minutes of meeting
held on Thursday, 21 June 2007, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon James TO Kun-sun
Hon Ronny TONG Ka-wah, SC

Member Absent : Hon LI Kwok-ying, MH, JP

Public Officers attending : Judiciary Administration

Miss Emma LAU
Judiciary Administrator

Miss Annie TANG
Deputy Judiciary Administrator (Development)

Miss Vega WONG
Assistant Judiciary Administrator (Development)

The Administration

Administration Wing, Chief Secretary for
Administration's Office

Mrs Alice CHEUNG
Assistant Director of Administration

Department of Justice

Mr K F CHENG
Senior Assistant Law Draftsman

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

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Ms Amy YU
Senior Council Secretary (2) 3

Action

I. Meeting with the Judiciary Administration and the Administration

(LC Paper No. CB(2)2240/06-07(01) - Judiciary's paper on "Attendance at Bills Committee Meetings by Representatives of the Judiciary"

LC Paper No. CB(2)2217/06-07(01) - Legal Adviser's letter dated 18 June 2007 to the Chairman on the propriety in parliamentary practice for inviting members of the Judiciary to attend meetings of the Bills Committee

LC Paper No. CB(2)2217/06-07(02)- Assistant Legal Adviser's letter dated 12 June 2007 to the Judiciary Administration on Part 5 of the Bill

LC Paper Nos. CB(2)1995/06-07(03) and (04) - Assistant Legal Adviser's letter dated 9 May 2007 and the Judiciary Administration's response setting out a summary of the views received on the "Consultation Paper on Proposed Legislative Amendments for the Implementation of Civil Justice Reform" published in April 2006

LC Paper No. CB(2)1836/06-07(01) - Marked-up copy of the Bill prepared by the Legal Service Division

LC Paper No. CB(3)452/06-07 - The Bill

Issued vide LC Paper No CB(2)1960/06-07 - Final Report of the Working Party on Civil Justice Reform published in March 2004)

The Bills Committee deliberated (index of proceedings attached at **Annex.**)

Attendance at Bills Committee meetings

Administration 2. The Administration was requested to consider the arrangement proposed by the Chairman for the Administration to instruct counsel to attend meetings of the Bills Committee to answer members' concerns and questions .

Action

Part 5 of the Bill - vexatious litigants

Judiciary
Administration
/Administration

3. The Judiciary Administration/Administration was requested to -
- (a) consider changing the conjunctive phrase "habitually and persistently" in the proposed section 27(2)(a) to a disjunctive phrase "habitually or persistently";
 - (b) review the Chinese rendition for "habitually and persistently" in the proposed section 27(2)(a);
 - (c) provide information on the meaning of "vexatious legal proceedings" in the proposed section 27(2)(a), with case law where appropriate;
 - (d) provide examples and case law to illustrate the meaning of "affected person" under the proposed section 27(5)(b) in relation to non-parties;
 - (e) explain the rationale for raising the threshold for granting a vexatious litigant leave to institute or continue proceedings under the proposed section 27A(1)(b), requiring that there were reasonable - not just prima facie - grounds for the proceedings;
 - (f) consider providing for a mechanism for a person who was subject to a vexatious litigant order to apply for setting aside the order even though he had no intention to issue any legal proceedings; and
 - (g) clarify as to whether under the proposed section 27A(2), application for leave to appeal concerning the same legal proceedings could be re-submitted after being previously refused.

II. Any other business

4. Members noted that the next meeting would be held on 26 June 2007 at 8:30 am.
5. The meeting ended at 6:05 pm.

**Proceedings of the fourth meeting of the
Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007
on Thursday, 21 June 2007, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 001655	Chairman	<p>Members noted the Legal Adviser's letter to the Chairman concerning attendance at Bills Committee meetings by representatives of the Judiciary (LC Paper No. CB(2)2217/06-07(01) -</p> <ul style="list-style-type: none"> (a) the Legal Adviser was not aware of any rule which forbade the Bills Committee to invite judges to attend its meetings or any protocol which made judges unable to come to the Legislative Council (LegCo); (b) in UK, judges were increasingly involved in giving evidence to committees in the House of Commons; and (c) in working out mutually acceptable arrangement, care should be taken to ensure that the arrangement did not have the effect of compromising judicial independence <p>Members noted that according to the information provided by the House of Commons Information Office in response to the Secretariat's enquiry, when the Civil Procedure Bill, which was to implement Lord Woolf's recommendations on civil justice reform, was introduced into the UK Parliament, there was then no procedure for Standing Committees (the equivalent of LegCo's Bills Committees) to receive evidence from non-Members of Parliament. Mr Gary STREETER, a Minister in the Lord Chancellor's Department and a Member of the Parliament, was responsible for guiding the Bill through the Standing Committee. Mr STREETER was a lawyer and as such possessed the legal expertise to pilot the Bill through the legislative process</p> <p>Members noted the Judiciary's paper on the subject [LC Paper No. CB(2)2240/06-07(01)] which stated -</p> <ul style="list-style-type: none"> (a) the Judiciary's position that as a matter of constitutional principle, judges should not appear before the Bills Committee; (b) the appearance of judges before a LegCo committee would undermine the independence of the Judiciary, and its 	

Time marker	Speaker	Subject(s)	Action Required
		<p>independence from the executive authorities and the legislature; and</p> <p>(c) together with the executive authorities who were responsible for piloting the Bill through the legislative process, the Judiciary Administration should continue, on behalf of the Judiciary and as authorized by the Chief Justice, to assist the Bills Committee in its scrutiny of the Bill</p> <p>The Chairman's views that -</p> <p>(a) representatives of the Judiciary Administration were not in a position to explain the Bill to the Bills Committee as it was outside their job responsibilities to do so. According to the list of main responsibilities of the Judiciary Administrator, she could only play a liaison role with LegCo on, inter alia, legislative proposals affecting the Judiciary; and</p> <p>(b) in order to resolve a practical issue faced by the Bills Committee and as the Government official responsible for piloting the Bill through LegCo was the Chief Secretary for Administration as asserted in paragraph 8 of the Judiciary's paper, consideration should be given by the Administration to instruct counsel with the relevant legal expertise (whether from within or outside the Department of Justice) to attend the Bills Committee meetings to answer members' questions and concerns</p>	<p>Administration to follow up</p>
001656 - 003514	Chairman Judiciary Administration Administration Mr James TO Mr Ronny TONG	<p>The Judiciary Administration's response that -</p> <p>(a) in past occasions where LegCo scrutinised bills relating to the Judiciary's operation, such as the District Court (Amendment) Bill 1999, the Judiciary Administration had represented the Judiciary to attend meetings of relevant Bills Committees to provide the necessary explanation and assistance;</p> <p>(b) the Judiciary Administration was authorized by the Chief Justice to continue to represent the Judiciary to attend the meetings of the Bills Committee to facilitate members' scrutiny of the Bill;</p> <p>(c) the Judiciary Administration's representatives had been closely involved in</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>and supported the work of the Working Party on Civil Justice Reform as well as the work of the Steering Committee; and</p> <p>(d) the Judiciary's position was in relation to the situation in Hong Kong and it would not comment on the practice in other common law jurisdictions</p> <p>The Administration's response that -</p> <p>(a) it respected and agreed with the Judiciary's position on the matter; and</p> <p>(b) the Judiciary Administration had represented the Judiciary to assist the Administration in its deliberations on the recommendations of the Steering Committee</p> <p>The Chairman's view that the scrutiny process of the District Court (Amendment) Bill 1999 was different from that of the Bill on Civil Justice (Miscellaneous Amendments) Bill 2007. In the former case, the Department of Justice had provided greater input in the scrutiny process and there were Government counsels attending the meetings</p> <p>Mr James TO's view that it was acceptable to him so long as representatives of the Administration or the Judiciary Administration were capable of answering members' queries and concerns on both policy and drafting aspects of the Bill. If they could not do so, they should seek assistance from legal professionals as suggested by the Chairman</p>	
003515 - 003749	Chairman Judiciary Administration	Briefing by the Judiciary Administration on Part 5 of the Bill concerning vexatious litigants which sought to amend section 27 of the High Court Ordinance (HCO) to provide for a vexatious litigant order to be made not only on the application of the Secretary for Justice as at present, but also on the application of affected persons	
003750 - 004421	Chairman ALA5 Judiciary Administration	<p>Briefing by ALA on her letter dated 12 June 2007 to the Judiciary Administration on Part 5 of the Bill [LC Paper No. CB(2)2217/06-07(02)] which sought information on the following -</p> <p>(a) the legislation on prevention of vexatious litigation in other common law jurisdictions; and</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) whether there was any safeguard to prevent unmeritorious applications under the proposed section 27</p> <p>Judiciary Administration's response that -</p> <p>(a) the proposed amendments to section 27 of HCO were based on the recommendations of the Final Report and having regard to comments received in the consultation exercises; and</p> <p>(b) it would provide a detailed response to ALA's letter as soon as practicable</p>	<p>Judiciary Administration to follow up</p>
<p>004422 - 005221</p>	<p>Chairman Mr James TO Judiciary Administration</p>	<p>Mr James TO's enquiry on the rationale for including the proposed section 27(3)(b) concerning the duration of a vexatious litigant order, which should be covered under "terms and conditions" in the proposed section 27(3)(a)</p> <p>Members' concern about the lack of clarity in the definition of "affected person" under the proposed section 27(5)(b) in relation to non- parties</p> <p>Judiciary Administration's response that -</p> <p>(a) the proposed section 27(3)(b) was included to implement Recommendation 67 in the Final Report that the duration of vexatious litigants orders should be made clear in the legislation, following the practice in England and Wales; and</p> <p>(b) the proposed section 27(5)(b) was based on Recommendation 68 in the Final Report</p> <p>The Judiciary Administration/Administration was requested to provide examples to illustrate the meaning of "affected person" under the proposed section 27(5)(b)</p>	<p>Judiciary Administration/ Administration to follow up</p>
<p>005222 - 010115</p>	<p>Chairman Judiciary Administration</p>	<p>The Chairman' s concerns about the restrictions imposed by the proposed section 27 on the right of access to the courts and possible abuse of the provision arising from the extended jurisdiction of the court to make a vexatious litigant order on the application of an affected person</p> <p>The Chairman's view that it was important to make clear in the legislation the circumstances under which a vexatious litigant order might be made under the proposed section 27(2)(a)</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>Judiciary Administration's response that -</p> <ul style="list-style-type: none"> (a) the threshold for granting a vexatious litigant order under the proposed section 27(2)(a) was the same as the current section 27; (b) no comments on the need to amend the proposed section 27(2)(a) had been received during the past consultation exercises; (c) the court would not grant such order lightly. Over the past ten years or so, only two such orders had been granted by the courts; and (d) initial research indicated that in New South Wales of Australia and some provinces in Canada, there were statutory provisions which allowed aggrieved parties, in addition to Attorney General or equivalent, to apply for an order against vexatious litigants <p>The Chairman requested the Judiciary Administration/Administration to provide information on case law relating to definition of "affected person" in other common law jurisdictions</p>	<p>Judiciary Administration/ Administration to follow up</p>
<p>010116 - 010655</p>	<p>Chairman Mr James TO Judiciary Administration Administration</p>	<p>Mr James TO's question as to whether the word "vexatious" in the proposed section 27(2)(a) had the same meaning as "without reasonable grounds", or whether it constituted a separate qualifying condition for granting a vexatious litigant order</p> <p>Judiciary Administration's response that the wording of the proposed section 27(2)(a) was the same as that of the existing section 27(1)</p> <p>Administration's response that "vexatious" and "without reasonable grounds" constituted separate qualifying conditions. An order could not be made under the proposed section 27(2)(a) should there be reasonable grounds for instituting vexatious legal proceedings</p> <p>The Judiciary Administration/Administration was requested to provide information on the meaning of "vexatious legal proceedings" in the proposed section 27(2)(a), with case law where appropriate</p>	<p>Judiciary Administration/ Administration to follow up</p>
<p>010656 - 011244</p>	<p>Chairman Mr Ronny TONG</p>	<p>Mr Ronny TONG's view that "habitually and persistently" in the proposed section 27(2)(a)</p>	<p>Judiciary Administration/</p>

Time marker	Speaker	Subject(s)	Action Required
	Administration	should be changed to “habitually <u>or</u> persistently”	Administration to follow up
011245 – 011400	Chairman	The Judiciary Administration/Administration was requested to review the Chinese rendition for “habitually and persistently”, as the Chinese terms “慣常” and “經常” had the same meaning and “經常” failed to convey the meaning of “persistently”	Judiciary Administration/ Administration to follow up
011401 – 012347	Chairman Judiciary Administration Mr James TO	Discussions on the proposed section 27A The Chairman requested the Judiciary Administration/Administration to explain the rationale for raising the threshold for granting a vexatious litigant leave to institute or continue proceedings under the proposed section 27A(1)(b), requiring that there were reasonable - not just prima facie - grounds for the proceedings The Judiciary Administration’s advice that while there was a right to appeal against a vexatious litigant order made under the proposed section 27(2), there was no express provision on a mechanism for a person who was subject to a vexatious litigant order to apply for setting aside the order even though he had no intention to issue any legal proceedings. The Judiciary Administration/Administration was requested to provide a written response on whether consideration could be given to providing for such a mechanism	Judiciary Administration/ Administration to follow up Judiciary Administration/ Administration to follow up
012348 - 012425	Chairman Judiciary Administration Mr James TO	Mr James TO’s question on whether an “affected person” would be awarded costs The Judiciary Administration’s response that the court had the discretion to decide on costs as in other court proceedings	
012426 - 013351	Chairman Judiciary Administration Mr James TO	Judiciary Administration’s advice that the proposed section 27A(2) was added in response to the concern of the Hong Kong Bar Association about the lack of a right of appeal by a person who was refused leave to institute or continue proceedings under the proposed section 27A(1) The Judiciary Administration/Administration was requested to clarify whether under the proposed section 27A(2), an application for leave to appeal concerning the same legal proceedings could be re-submitted after being previously refused	Judiciary Administration/ Administration to follow up

Time marker	Speaker	Subject(s)	Action Required
013352 – 013417	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
15 August 2007