

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1141/07-08

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Ref : CB2/PL/AJLS

**Panel on Administration of Justice and Legal Services**

**Minutes of meeting**  
**held on Monday, 28 January 2008, at 4:30 pm**  
**in Conference Room A of the Legislative Council Building**

**Members present** : Hon Margaret NG (Chairman)  
Hon Martin LEE Chu-ming, SC, JP (Deputy Chairman)  
Hon James TO Kun-sun  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Miriam LAU Kin-ye, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon CHOY So-yuk, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon LI Kwok-ying, MH, JP

**Member attending** : Hon WONG Kwok-hing, MH

**Public Officers attending** : Item IV

Department of Justice

Mr Frank POON  
Deputy Solicitor General (Acting)

Ms Phyllis KO  
Senior Assistant Law Draftsman

Miss Amy CHAN  
Senior Government Counsel

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Item V

The Administration

Administration Wing, Chief Secretary for Administration's  
Office

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Mr K C YAU  
Assistant Director of Administration

Miss Christine CHOW  
Principal Assistant Secretary for Home Affairs

Judiciary Administration

Mr NG Sek-hon  
Deputy Judiciary Administrator (Operations)

**Attendance by  
invitation** : Item IV

Hong Kong Bar Association

Mr Gary SOO

Item V

The Law Society of Hong Kong

Mr Nick HUNSWORTH  
Chairman, Law Society's Civil Litigation Committee

Ms Barbara HUNG  
Member, Law Society's Family Law Committee

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

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

Mrs Eleanor CHOW  
Senior Council Secretary (2)4

Mrs Fanny TSANG  
Legislative Assistant (2)3

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**I. Confirmation of minutes of meetings**

(LC Paper No. CB(2)673/07-08 - Minutes of meeting on 26 November 2007

LC Paper No. CB(2)927/07-08 - Minutes of meeting on 13 December 2007)

The minutes of the meetings held on 26 November and 13 December 2007 were confirmed.

**II. Information papers issued since last meeting**

(LC Paper No. CB(2)718/07-08 - Judicial Officers Recommendation Commission Report 2006

LC Paper No. CB(2)840/07-08(01) - Administration's reply concerning the setting up of a Building Affairs Tribunal

LC Paper No. CB(2)878/07-08(01) - Administration's reply on the legislative timetable to implement the recommendations of the Final Report of the Working Party on Solicitors' Rights of Audience)

2. Members noted that the above papers had been issued since the last meeting.

**III. Items for discussion at the next meeting**

(LC Paper No. CB(2)929/07-08(01) - List of outstanding items for discussion

LC Paper No. CB(2)929/07-08(02) - List of items tentatively scheduled for discussion at Panel meetings in 2007-2008 session

LC Paper No. CB(2)929/07-08(03) - List of follow-up actions

LC Paper No. CB(2)929/07-08(04) - Letter dated 20 December 2007 from the Secretary for Home Affairs concerning the establishment of an independent statutory legal aid authority

LC Paper No. CB(2)929/07-08(05) - Summary of recommendations of the Legal Aid Services Council's report on publicly funded legal services provided by the Legal Aid Department and the Duty Lawyer Service provided to the Panel in 1999

LC Paper No. CB(2)929/07-08(06) - Letter dated 21 February 2007 from the Hong Kong Catholic Commission for Labour Affairs concerning the procedures for filing claims in the Labour Tribunal

LC Paper No. CB(2)929/07-08(07) - Judiciary Administration's response to the views of the Hong Kong Catholic Commission for Labour Affairs)

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Meeting on 28 July 2008

3. The Chairman informed members that the last Council meeting would be held on 9 July 2008 and by then the Panel would have reported on its work to the Council. She sought members' view on whether the regular meeting scheduled for 28 July 2008 was necessary. Members agreed that the meeting should be cancelled. Members also agreed that a meeting could be arranged in early July 2008 if necessary.

Agenda for the next meeting

4. Members agreed that the following items would be discussed at the next meeting on 25 February 2008 -

- (a) Criminal legal aid fees system;
- (b) Review of the jurisdiction of the Office of the Ombudsman;
- (b) Review of the non-commencement of ordinances; and
- (c) Proposed research outline on "Legal aid system in selected places" (paragraph 7 below refers).

Limited liability for professional practices

5. Ms Audrey EU enquired about the timing to discuss the item "Limited liability for professional practices". The Chairman said that pending the Administration's reply by the end of this month, the Panel would decide at the next meeting how to follow up the matter.

Independent statutory legal aid authority

6. The Chairman informed members that the Administration had advised that the Legal Aid Services Council (LASC) would complete the study on the establishment of an independent statutory legal aid authority around the end of 2008. This being the case, the item could be discussed by the Panel some time in 2009. The Chairman said that the LASC had made reference to overseas practices in its previous study and it was expected that LASC would provide an update on overseas practices in the current study. She consulted members on whether the Panel should conduct its own research study on legal aid systems in overseas jurisdictions.

7. Ms Emily LAU suggested and members agreed that LegCo's Research and Library Services Division should propose a research outline for members' consideration at the next meeting.

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Letter from the Hong Kong Catholic Commission for Labour Affairs

8. The Chairman said that the Administration had responded to the Hong Kong Catholic Commission for Labour Affairs' submission on "Enhancement of the claims mechanism in respect of labour disputes handled by the Labour Tribunal". She informed members that the issue of enforcement of Labour Tribunal awards, among other things, was examined by the Judiciary's Working Party on the Review of the Labour Tribunal (the Working Party). In June 2004, the Working Party issued a Report which was considered at a number of joint meetings of this Panel and the Panel on Manpower. In its submission, the Hong Kong Catholic Commission for Labour Affairs expressed concern that some measures recommended by the Working Group were not effective. The Chairman sought members' views on how the submission should be dealt with. She said that as agreed by the two Panels, issues relating to dispute resolution mechanism should be taken up by the Panel on Manpower.

9. Ms Emily LAU said that Mr Jasper TSANG raised a question on the claims lodged at the Labour Tribunal and related issues at the Council meeting on 9 January 2008. As Secretary for Labour and Welfare was the principal official giving response to the question, it was considered more appropriate for the Panel on Manpower to follow up the submission. She said that where necessary, the Panel on Manpower could invite representatives from the Judiciary, as well as members of this Panel, to attend the meeting. Members supported her views. The Chairman instructed the Clerk to refer the submission to the Panel on Manpower for follow-up.

Clerk

**IV. Reform of the law of arbitration**

(LC Paper No. CB(2)813/07-08 - Consultation Paper on Reform of the Law of Arbitration and Draft Arbitration Bill

LC Paper No. CB(2)813/07-08(01) - Executive summary of the Consultation Paper

LC Paper Nos. CB(2)813/07-08(02) and (03) - Extracts from the minutes of meetings on 27 June 2005 and 28 May 2007

LC Paper No. CB(2)916/07-08 - Corrigenda to the Consultation Paper on Reform of the Law of Arbitration and Draft Arbitration Bill provided by the Administration

LC Paper No. CB(2)929/07-08(08) - Administration's information paper on "Reform of the law of arbitration in Hong Kong")

10. Deputy Solicitor General (Acting) (DSG(Atg)) said that Solicitor General could not attend this meeting because he was indisposed. DSG(Atg) said that the Department of Justice (DoJ) had published the Consultation Paper on Reform of the Law of Arbitration in Hong Kong and the Draft Arbitration Bill (the Consultation Paper) on 31 December 2007 to seek views on reform of the law of arbitration in Hong

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Kong. He briefed members on the Administration's paper (LC Paper No. CB(2)929/07-08(08)) which gave a brief introduction on the Consultation Paper. In gist, the Consultation Paper sought to create a unitary regime of arbitration on the basis of the UNCITRAL Model Law on International Commercial Arbitration (Model Law) adopted by the United Nations Commission on International Trade Law for all types of arbitration, thereby abolishing the distinction between domestic and international arbitrations under the existing Arbitration Ordinance (Cap. 341). The draft Bill adopted the structure of the Model Law as its framework. As the Model Law was familiar to practitioners from civil law as well as common law jurisdictions, this would have the benefit of enabling the Hong Kong business community and arbitration practitioners to operate an arbitration regime which accorded with widely accepted international arbitration practices and development. Hong Kong would be seen as a Model Law jurisdiction thereby attracting more business parties to choose Hong Kong as a place to conduct arbitral proceedings.

11. Mr Gary SOO of the Hong Kong Bar Association said that the Bar Association welcomed the publication of the Consultation Paper and supported the direction of the draft Bill. The Bar Association had participated in the discussion on the reform of law of arbitration in the past years. It was currently studying the draft Bill and would give a detailed response in due course.

12. The Chairman recalled that the construction industry had previously expressed concern that certain rights and protections of domestic users of arbitrations would be removed following the adoption of a unitary regime of arbitration. Subsequently, the Report issued by the Committee on Hong Kong Arbitration Law of The Hong Kong Institute of Arbitrators had proposed to allow users of standard form contract to opt in to certain provisions of the current domestic regime which provided for the protections. The Chairman asked whether the concern was addressed in Part 11 of the draft Bill.

13. DSG(Atg) explained that certain provisions under Cap. 341 that only applied to domestic arbitration had been retained as opt-in provisions under Schedule 3 to the draft Bill. It was provided under Part 11 that parties to an arbitration agreement could expressly provide in the arbitration agreement as to whether any of the provisions in Schedule 3 should apply. To address the concern raised by the construction industry where users of standard form contracts might continue to use the term "domestic arbitration" in such contracts either before or for sometime after the commencement of the new ordinance, it was provided under Part 11 of the draft Bill that, where an arbitration agreement entered into before, or at any time within a period of six years after, the commencement of the new ordinance, stipulated that an arbitration under that arbitration agreement should be a "domestic arbitration", all the opt-in provisions under Schedule 3 should automatically apply to the arbitration agreement subject to any express agreement to the contrary between the parties.

14. The Chairman said that the legal profession had expressed concern that a right to appeal against arbitral awards was provided in domestic arbitration but not in international arbitration. She asked how the concern would be addressed in the Bill.

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15. DSG(Atg) explained that section 23 of Cap. 341 concerning appeal against arbitral awards on question of law was retained as an opt-in provision in Schedule 3. Parties to an arbitration agreement could expressly provide in the arbitration agreement such a provision that only applied to domestic arbitration. Given that the world trend was to minimize court's interference in arbitral awards, an appeal mechanism was not provided in the Model Law.

16. In response to the Chairman, DSG(Atg) said that the consultation period would end on 20 April 2008. Given that the reform of the law arbitration was a complex issue, the consultation was subject to further extension if required. The Administration intended to introduce the draft Bill into the LegCo during the 2008-2009 legislative session. In further response to the Chairman, DSG(Atg) said that since the publication of the Consultation Paper, the DoJ had received requests for briefings from various organisations and the first seminar would be held on the coming Saturday.

17. The Chairman said that the Consultation Paper appeared to have addressed the concerns raised by the Panel and other organisations. Members expressed general support for the Consultation Paper.

*(The meeting was suspended from 5:10 pm to 5:30 pm.)*

**V. Enforcement of judgment in civil cases**

(LC Paper No. CB(2)929/07-08(09) - Background Brief prepared by the Legislative Council Secretariat on "Enforcement of judgment in civil cases"

LC Paper Nos. CB(2)1100/06-07(01) and (02) - Comments received from the Law Society's Civil Litigation Committee and Family Law Committee and a solicitor's firm on "Enforcement of court judgments in civil cases"

LC Paper No. CB(2)929/07-08(10) - Judiciary Administration's reply to the Law Society's Civil Litigation Committee and Family Law Committee

LC Paper No. CB(2)929/07-08(11) - Administration's paper on "Enforcement of judgment in civil cases")

Views of the Law Society

18. Mr Nick HUNSWORTH, Chairman of the Civil Litigation Committee of the Law Society of Hong Kong, summarised the paper submitted by the Law Society in February 2007 (LC Paper No. CB(2)1100/06-07(01)). Mr HUNSWORTH said that the Law Society accepted that enforcement of a judgment debt was ultimately a matter for the judgment creditor, in the sense the court did not take it upon itself to recover debts, but that the existing methods of enforcement of civil judgments needed to be reviewed in the light of technological advances and in the light of inadequate recoveries for creditors. He stressed the significance of income attachment orders in

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the United Kingdom and said that the historical reasons for not having these in Hong Kong no longer existed. He remarked on the dissatisfaction with the performance of the Bailiff's Office and recommended consideration be given to some means of motivating bailiffs, perhaps by giving them a percentage of recoveries. He described the difficulties of service of court process and the cumbersome procedure for substituted service.

19. Ms Barbara HUNG, Member of the Family Law Committee of the Law Society, then addressed the Panel. She emphasized the difficulties faced by practitioners in keeping track of the whereabouts of maintenance payers, particularly when they changed address. Government departments, although in theory were capable of providing change of address details, often refused because of privacy issues. She said that the difficulties experienced by practitioners of family law were generally the same as those experienced by practitioners of civil litigation as highlighted by Mr HUNSWORTH.

Response of the Administration

20. Assistant Director of Administration (ADA) said that the Judiciary Administration and the Administration had responded to the main points raised by members at previous meetings and in the written submissions of the Law Society and a solicitor's firm. Details were set out in LC Paper No. CB(2)929/07-08(10) and (11) respectively. The Administration held the view that relevant bureaux should consider the need to introduce appropriate measures to address the specific problems, taking account of policy and resources considerations, if problems in enforcing judgments in specific areas were identified.

21. On enforcement of maintenance orders, Principal Assistant Secretary for Home Affairs (PASHA) said that the relevant departments, namely the Immigration Department, Transport Department, Housing Department and the Police, were fully cognizant of the fact that failure of the paying party to provide notice of change of address was a criminal offence. They had confirmed that where available, they would provide the maintenance payer's addresses to the maintenance payee or his legal representative at the latter's request through a standard letter, if the maintenance payer's address was required for instituting legal proceedings against him for failing to pay maintenance. If the Law Society encountered difficulties in any specific case, it could refer the case to the Home Affairs Bureau which would look into the case with the relevant departments.

22. Deputy Judiciary Administrator (DJA0) said that the role of the Judiciary was to adjudicate on cases. As a matter of principle, in civil cases, the litigants bore the responsibility of enforcing the judgment if it was not complied with. It was not the Judiciary's responsibility to monitor the compliance of civil judgments. If it was considered that the judgment creditors in certain types of cases should be treated differently from other judgment creditors in civil cases, the Judiciary shared the Director of Administration's view that this was a matter of policy for the relevant bureaux in the Administration to consider.

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23. The Chairman expressed dissatisfaction that the Administration's Wing of the Chief Secretary for Administration's Office, the policy bureaux and the Judiciary Administration were reluctant to assume responsibility and were trying to pass the buck around. She said that if judgments delivered by a court could not be effectively enforced, it implied that there were inadequacies in the enforcement mechanisms which was a matter for concern. She asked how the Administration would follow up the matter.

24. ADA responded that apart from Labour Tribunal awards and maintenance orders, other civil judgments did not encounter much difficulties in enforcement. Nevertheless, the Administration and the Judiciary would consider any concrete suggestions to improve the mechanisms generally applicable to all civil actions, such as those proposed by the Law Society in its submission.

Discussion

*Labour Tribunal awards*

25. Mr WONG Kwok-hing expressed disappointment that since the Employment Ordinance (Cap. 57) came into force some 40 years ago, in about half of the cases, employees had failed to obtain the judgment sum awarded by the Labour Tribunal from the employers concerned. The situation was the same in respect of recovery of contributions to the Mandatory Provident Fund from insolvent companies. He asked how the Judiciary would deal with this problem. He said that the Panel on Manpower had referred the issue to this Panel as the Judiciary declined to attend its meeting to discuss the issue.

26. DJAO said that while the Judiciary was not the party responsible for enforcement of judgments not complied with, it had implemented measures to improve the existing operation of the Labour Tribunal based on the recommendations of the Judiciary's Working Party. He further said that the Judiciary had attended meetings of the Panel on Manpower when relevant issues were discussed in the past. It would continue to do so on a need basis.

27. ADA supplemented that the Secretary for Labour and Welfare, in response to Mr Jasper TSANG's question at the Council meeting on 9 January 2008, had said that the Administration was aware of the problems faced by some employees in recovering the sum awarded by the Labour Tribunal in their favour. The Administration would continue to work closely with the Judiciary to explore feasible improvement measures to safeguard the statutory rights of employees.

28. Mr WONG asked whether the Administration had considered adopting the practice of New Zealand in resolving labour disputes, i.e. the Employment Court had substantive powers on enforcement of judgments (e.g. power to imprison defaulters to comply with a compliance order, to order payment of a fine, or to have the person's property sequestered). ADA said that he did not have the latest information on hand and would consult the Labour and Welfare Bureau on the matter.

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29. Mr WONG Kwok-hing expressed disappointment at the lack of progress. He requested the Chairman to arrange a joint meeting with the Panel on Manpower to discuss defaulted Labour Tribunal awards. The Chairman said that measures to resolve labour disputes and protect the interests of successful claimants in recovering judgment awards were under the purview of the Panel on Manpower. It was also the preference of members of the Panel on Manpower that such matters should be dealt with by their Panel.

30. Ms Emily LAU referred to the submission from the Hong Kong Catholic Commission for Labour Affairs which expressed concern about the waiting time for handling claims filed at the Labour Tribunal (LC Paper No. CB(2)929/07-08(06)). The Administration had responded that over 80% of the 7 358 concluded in the period from September 2006 to October 2007 were concluded within one month after the date of filing (LC Paper No. CB(2)929/07-08 (07)). Ms LAU pointed out that this implied that as many as 1 472 cases took more than one month to conclude. She asked whether the long waiting time was due to shortage of manpower. She also asked whether the Labour Tribunal had not complied with its undertaking to reduce the number of conciliation attempts, as pointed out by the Hong Kong Catholic Commission for Labour Affairs.

31. DJAO explained that where cases could not be concluded within one month, some had been adjourned sine die pending further investigation by relevant authorities e.g. Police investigating. It had nothing to do with the manpower as the number of cases handled by the Labour Tribunal had decreased in recent years. As regards conciliatory attempts, DJAO explained that after a claim was filed in the Labour Tribunal, except in those cases where the parties had not previously sought the assistance of the Labour Relations Division of the Labour Department, there should only be one attempt by the Tribunal at settlement at the call-over hearing.

32. Ms Emily LAU asked about the involvement of the Judiciary "to explore feasible improvement measures to safeguard the statutory rights of employees" as stated in Secretary for Labour and Welfare's reply to Mr Jasper TSANG's question raised on 9 January 2008. DJAO said that to maintain impartiality, the Judiciary would refrain from discussion on policy issues. The involvement of the Judiciary was confined to improving the practice and procedure of the Labour Tribunal.

33. Mr CHOY So-yuk asked whether the Administration was prepared to amend local legislation to introduce new labour policies which were consistent with international law and technically feasible. ADA responded that as a general practice in formulating new policies or introducing changes to the existing policies, the Administration would assess their impact, compliance with local and international law, and whether they were operationally feasible, etc.

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*Obtaining the address of the defaulting maintenance payers*

34. Referring to the Administration's response in paragraph 21 above, Ms Miriam LAU said that she was unconvinced that the relevant departments, i.e. the Immigration Department, Transport Department and the Police, would co-operate with legal representatives and provide maintenance payers' address on requests. Based on her past experience, Government departments had often declined to provide such information on ground of protection of privacy. She said that the Housing Authority, which had information on a person's address when he moved from one public housing estate to another, should also be requested to co-operate.

35. PASHA said that the relevant departments had confirmed that the arrangement to provide a defaulting maintenance payer's address was still in force. As for the Inland Revenue Department, the "official secrecy" provision in the Inland Revenue Ordinance (Cap. 112) precluded it from providing information such as defaulting maintenance payers' address. The Hong Kong Police Force was fully aware of its duties in investigating cases involving a maintenance payer who failed to notify a maintenance payee of his change of address. The Police would consider the release of a defaulting payer's address on a case by case basis.

36. Ms Miriam LAU said that unless the Administration could provide an undertaking, otherwise practitioners could not rest assured that the relevant departments would co-operate to provide maintenance payers' address. The Chairman requested the Home Affairs Bureau to provide, after consulting the relevant departments, a written confirmation to the Law Society that such information would be provided on requests.

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*Bailiff service*

37. The Chairman asked the Law Society about the incentives offered to bailiffs under the current English system. Mr Nick HUNSWORTH advised members that bailiffs in England tended to be more proactive in recovering awards as they would get a percentage of the sum recovered.

38. Mr Martin LEE asked whether the Administration intended to address the ineffectiveness of the bailiff recovery system raised by the Law Society, and said that the failure of the existing system undermined the rule of law and made claimants disillusioned with the legal process and more inclined to use improper methods to recover debts. Mr James TO said that in order to address the situation of claimants engaging in unlawful practices to recover debts, he had proposed, while working as a member of the Fight Crime Committee some five years ago, to the then Secretary for Justice that the court should order relevant departments to release debtors' information to judgment creditors, e.g. the Inland Revenue Department or the Lands Department to provide information on assets of a debtor. The then Secretary for Justice had indicated that a working group under the Fight Crime Committee would study the matter. He enquired about the progress of the study and whether the working group had already been dissolved.

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D of Adm 39. ADA responded that he had no available information on hand and would consult the relevant department on the matter.

40. The Chairman said that the Administration had the responsibility to monitor the effectiveness of the new measures after implementation, and review the existing policies with a view to making improvement. The concerns raised by the Hong Kong Catholic Commission for Labour Affairs indicated that some of the measures implemented by the Judiciary were not effective. As many employees and matrimonial maintenance payees still had difficulty in recovering the awarded sum, it boiled down to the questions of whether judgments delivered by the courts served any meaningful purpose and whether the rule of law was effective. She pointed out that when the law was ineffectual, claimants would resort to self-help and sought assistance from agencies such as debt collectors. She expressed dissatisfaction that the Judiciary and the Administration were apathetic about the matter. She requested ADA and DJAO to relay members' concerns to the Chief Secretary for Administration and the Judiciary respectively. She also instructed the Clerk to write to the Chief Secretary for Administration urging him to follow up the matter seriously. The Administration would also be requested to update the Panel on the work of the working group mentioned by Mr James TO.

Adm  
Judiciary  
Clerk

*(Post-meeting note: A letter was sent to the Chief Secretary for Administration on 19 February 2008.)*

41. There being no other business, the meeting ended at 6:35 pm.

Council Business Division 2  
Legislative Council Secretariat  
22 February 2008