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Panel on Manpower

Background brief prepared by the Legislative Council Secretariat for the meeting on 18 December 2008

Enforcement of Labour Tribunal Awards

Purpose

This paper provides information on past discussions of Members on the enforcement of Labour Tribunal (LT) awards.

Background

2. LT was set up in 1973 under the Labour Tribunal Ordinance (Cap. 25) (LTO). It has exclusive jurisdiction over employment-related civil claims. Being civil in nature, the litigating parties bear the responsibility of enforcing LT judgment if it is not complied with. With little means, some employees have great difficulties in enforcing LT awards on defaulting employers.

3. In the 2003-2004 session, the Panel on Manpower and the Panel on Administration of Justice and Legal Services (AJLS Panel) held a number of meetings with the Administration, the Judiciary Administration and deputations on the improvement of the existing mechanism for enforcement of LT awards and the effectiveness of the existing operation of LT as a quick, cheap, simple and informal forum for resolving employment disputes. In response to the requests of the Panels to improve the operation of LT, the Chief Justice set up an internal Working Party in June 2003 to conduct a review on the operation of LT.

4. The Working Party on the Review of the Labour Tribunal (the Working Party) published a report in June 2004 with 37 recommendations all of which had been accepted by the Chief Justice. The two Panels discussed the Working Party report and related issues at their joint meetings on 9 November 2004 and 13 December 2004. The two Panels noted that some of the measures recommended by the Working Party had already been implemented

by administrative means and some required legislative amendment.

5. The two Panels agreed in March 2005 that -

(a) issues relating to measures to improve the existing mechanism for enforcement of LT awards and the overall employment dispute resolution mechanism should be taken up by the Panel on Manpower; and

(b) issues relating to enforcement of judgments in civil cases should be taken up by the AJLS Panel.

Present practice of enforcing LT awards

6. At present, if a judgment debtor does not settle payment in full or at all, the judgment creditor can enforce the award. He has a choice of several modes of execution, including -

(a) a Charging Order against the landed properties of the judgment debtor;

(b) a Garnishee Order so that monies held by a third party (such as a bank) for the judgment debtor can be applied to satisfy the award; and

(c) a Writ of Fiere Facias to seize the goods and chattels on the premises of the judgment debtor (commonly referred to as use of bailiff service).

7. The efficacy of the execution modes greatly hinges on the knowledge of the availability and whereabouts of the assets and properties of the judgment debtor. A Charging Order may not provide genuine relief if a judgment debtor does not have any property under his name or does not seek to sell his property. The prerequisite of resorting to a Garnishee Order is knowledge of the whereabouts of the monies of the judgment debtor. As for Writs of Fieri Facias, a judgment creditor has to bear the costs of the execution (e.g. a deposit of $5,200 for bailiff service, in addition to other administrative costs).

8. An employee may also choose to file a winding-up or bankruptcy petition against the defaulting employer so as to exert pressure on the employer to pay up to avoid being forced out of business. The employee may apply for assistance from the Legal Aid Department (LAD), subject to his passing the means test and the merits test. Employees who are not eligible for legal aid will usually have to engage lawyers in private practice to assist in initiating the

winding-up or bankruptcy proceedings, which typically costs around $40,000 to $50,000. The relatively high cost tends to discourage employees from taking recovery action through this channel.

9. According to the Labour and Welfare Bureau (LWB), the Labour Department (LD) has adopted a multi-pronged approach to assist employees aggrieved by defaulted LT awards. If the employer is insolvent, LD will refer them to LAD for initiating a winding-up or bankruptcy petition against the employer and to apply for ex-gratia payment from the Protection of Wages on Insolvency Fund (PWIF). As an integral part of its law enforcement work, LD carries out vigorous enforcement to deter employers from committing wage offences, thereby helping to reduce the incidence of defaulted LT awards. As an administrative measure, LD has suspended the provision of free recruitment service to those employers who are known to have defaulted LT awards until the payment is settled. LD has also put in place an arrangement whereby an officer in each of its Labour Relations Division branch offices will, in addition to his existing duties, assume the role of "Award Enforcement Support Officer" to provide necessary information and appropriate assistance to employees with defaulted LT awards.

Deliberations of the Panel on Manpower

10. The Panel on Manpower discussed the improvement measures on enforcement of LT awards at its meetings on 16 February 2006, 24 April 2008 and 8 July 2008. At the Panel meeting on 8 July 2008, the Administration advised that it had identified three viable and effective measures to enhance the enforcement of LT awards with particular focus on employers who were financially able but unwilling to pay. There were basically two types of LT defaults, namely, cases in respect of which employers were financially unable to pay, and cases in respect of which employers were financially able but unwilling to pay. Employees of insolvency cases where employers were financially unable to pay should seek redress from PWIF. As to how unscrupulous employers should be dealt with, the Administration proposed the following measures -

(a) making non-compliance with LT awards a criminal offence;

(b) empowering LT to order defaulting employers to pay additional sums to the employees; and

(c) empowering LT to order disclosure of the financial details of defaulting employers.

The main issues discussed by the Panel are summarized below.

Financial relief to employees with defaulted LT awards

11. Some members expressed concern that employees could not afford to bear the cost of execution of a LT award and the litigation cost for filing winding-up/bankruptcy petition against defaulting employers. They suggested that the execution costs should be borne by PWIF, or the Administration should execute LT awards on behalf of employees.

12. A member pointed out that the Protection of Wages on Insolvency Ordinance (Cap. 380) (PWIO) provided that ex gratia payment should be provided under PWIF to employees of insolvent employers. PWIO did not provide for ex gratia payment to employees of defaulting employers.

13. The Administration responded that some members of the Labour Advisory Board (LAB) suggested that the extension of the coverage of PWIF should be considered as the last resort in case other means of enforcement had been exhausted and considered ineffective. Some other members of LAB were concerned that PWIF might become employees' resort in the first instance.

14. Some members suggested that the PWIF Board could file a winding-up petition and exercise its subrogation right on behalf of employees against defaulting employers. They considered the measure practical and in compliance with existing legislation. They requested the Administration to provide legal advice on this suggestion.

15. Having sought the advice of the Department of Justice (DoJ), LWB advised the Panel that under section 16 of PWIO, ex-gratia payment might be granted to an applicant if a winding-up or bankruptcy petition had been presented against the employer. Section 24 of PWIO provided that after payment under section 16 had been made, the rights and remedies of the employee, to the extent of the amount of payment made, should be transferred to and vested in the PWIF Board. It was only then that the PWIF Board might take steps to enforce its subrogation rights. Before payment was made, the PWIF Board did not have any standing to present a bankruptcy or winding-up petition against the employer. If the scope of PWIF was to be expanded to cover defaulted sums awarded by LT, PWIO would have to be amended.

16. Some members suggested relaxing or waiving the means test for legal aid for employees seeking to file winding-up/bankruptcy petition against defaulting employers. They suggested that section 5AA of the Legal Aid Ordinance (Cap. 91) (LAO) should be amended to empower the Director of Legal Aid to waive the means test for employees with defaulted LT awards.

17. The Administration explained that the suggestion to relax the means test for legal aid would have an impact on legal policy. It would give rise to the

question of unfairness to other legal aid applicants. As regards section 5AA of LAO, Director of Legal Aid was granted the power to waive the upper limit of the means test in meritorious applications where a breach of the Hong Kong Bill of Rights Ordinance or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong was an issue. Such power was granted as a matter of human rights consideration.

Making non-compliance with LT awards a criminal offence

18. The Administration informed members of its proposal to make wilful non-compliance of LT awards an offence. Under the proposal, directors and other persons responsible for the management of the company will be held criminally liable if they are also proven to have caused the breaches in question.

19. Some members enquired about the party responsible for instituting legal proceedings against defaulting employers and the penalty upon conviction. They also enquired about the interim measures to deal with defaulting employers before non-compliance with LT awards became a criminal offence.

20. The Administration advised that in case of deliberate default by employers, LD would institute prosecution against employers and the proceedings would be conducted at the Magistracy. LWB would further discuss the appropriate penalty with DoJ. The maximum penalty for wage offences under the Employment Ordinance (Cap. 57) (EO) was a fine of $350,000 and imprisonment of three years. As an integral part of LD's work, enforcement had been enhanced to deter employers from committing wage offences. If the employer was a limited company, LD, apart from prosecuting the company for wage offences, would also prosecute the responsible persons of the company for a like offence.

21. Some members expressed concern that prosecution would be instituted against an employer only when the employee concerned was willing to serve as a witness. They considered that prosecution should be instituted against an employer whenever there was sufficient evidence.

22. The Administration explained that if the employee concerned was unwilling to serve as witness, the Administration would not be able to institute prosecution. The court had previously stated that instituting prosecution without sufficient evidence would be a waste of court resources. The Administration would step up publicity and education and encourage employees to serve as witnesses.

23. Some members suggested that in order to tackle the problem in obtaining evidence to prove that a wage offence was made with the consent or connivance or to be attributable to the neglect of the company director of a

body corporate, the Administration should consider reversing the onus of proof or imposing an evidential burden on the defendant director as to his not having knowledge of or consented to the offence. They pointed out that in case of defaulted severance payment, the onus of proof was on employers.

24. The Administration responded that members' proposal involved a change in legal principle and policy, as the onus of proof rested with the prosecution. The legal principle in prosecution against employers defaulting wages and those found to have committed wilful non-compliance with LT judgment should be the same. Section 64B of EO, which specified the criminal liability of the responsible persons of a body corporate with regard to wage offences, was effective in enabling LD to take out enforcement actions against the responsible persons of a body corporate. The issue concerned was not about the adequacy of legislative provisions but the need to strengthen enforcement actions such as evidence collection and intelligence gathering against wage offences.

25. Regarding the prerequisite for proof of guilty intent of defaulting employers, the Administration explained that the proof of guilty intent would be one of the requirements for conviction, as in the case of wage default. The broad legal principle adopted in prosecution against defaulted wages could be considered for cases of defaulted LT awards.

26. A member pointed out that there were in general three elements of "guilty intent", namely "wilful", "reckless" and "negligent". The member asked whether the Administration had considered "reckless" as an acceptable condition for finding a defaulting employer criminally liable, and whether the Administration would, in terms of legal procedure, consider imposing evidential burden on the defaulting employer to prove that the defaulted sum was not due to wilful or reckless act.

27. The Administration responded that the condition upon which a defaulting employer would be found criminally liable might cover other elements of guilty intent. For example, according to section 64B of EO, "consent", "connivance" or "neglect" were the elements of offence against which an employer could be convicted. The Administration proposed to target at "wilful" non-compliance of LT awards an offence, i.e., the employers concerned were financially able to pay but unwilling to pay.

<u>Empowering LT to order defaulting employers to pay additional sums to the employees</u>

28. As an additional financial disincentive against defaulting employers delaying payment of awards and compensation to the victims, the Administration proposes to introduce legislative amendments to allow LT to order the payment of an additional sum to the employee from the date of order

up to the date of full and final payment by the employer. This measure would be particularly helpful to an employee with a relatively small awarded sum so as to enable him, over time and should the default situation be protracted, to reach the threshold of $10,000 for filing a winding-up or bankruptcy petition.

29. Some members expressed concern whether the proposed additional sums payable to employees in respect of defaulted LT awards would be ordered at the same time the judgment was made or subject to discretion of the relevant adjudicator, and whether a mechanism would be in place to enable LT to order defaulting employers to pay additional sums to the employees without requiring the employees concerned to file a separate application.

30. The Administration explained that the proposed measure requiring defaulting employers to pay an additional sum aimed to enhance the deterrent effect and put the message across to defaulting employers that there would be a cost for disregarding LT judgments. The procedure involved in the enforcement of the additional sum would be simple and efficient. LWB would sort out the relevant details with DoJ.

31. A member enquired whether the proposed additional sums payable to employees by defaulting employers would be set at a fixed rate or calculated in relation to the amount of the sum owed. The Administration responded that its initial thinking was to impose a daily amount ranging from $100 to $300. LWB would work out the details with DoJ.

Empowering LT to order disclosure of the financial details of defaulting employers

32. The Administration proposed to provide LT with the power to require a defaulting party to disclose his financial details. It would enable an employee to make an informed decision as to whether to proceed with the recovery action and, if so, the execution mode (e.g. Charging Order, Garnishee Order or Writ of Fiere Facias) that best suited his situation.

33. A member asked whether a mechanism would be introduced to order the disclosure of the financial details of defaulting employers and whether such a procedure would be invoked by the court or the applicant. To streamline court procedures, the member suggested that LT should add a specific term in the judgment ordering the disclosure of the financial details of the defaulting employer, if the employer refused to honour the judgment sum within a timeframe of, say, two weeks pursuant to the judgment.

34. The Administration responded that it would further discuss with DoJ whether a mechanism could be put in place to enable automatic disclosure of the relevant employer's financial details or the relevant employee would be required to file separate application in case the defaulting employer refused to

honor the judgment sum. The Administration agreed that the mechanism to be implemented should be user-friendly and efficient in its operation.

35. Members expressed support for the three measures proposed by the Administration to tackle irresponsible employers and enquired about the timetable for implementation. The Administration responded that the proposals involved legislative amendments and possible changes to some established procedures. LWB and LD would need to liaise closely with DoJ and the Judiciary to work out further details. The Administration would revert to the Panel in the 2008-2009 legislative session with concrete details on its legislative proposal.

Relevant question raised at the Council meeting on 9 January 2008

36. At the Council meeting on 9 January 2008, Hon TSANG Yok-sing raised a question on the number of cases handled by LT and the measures taken by the relevant authorities to assist employees with defaulted LT awards. The relevant Official Record of Proceedings of the Council meeting on 9 January 2008 is in **Appendix I**.

Relevant papers

37. A list of relevant papers available on the LegCo website (http://www.legco.gov.hk) is in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
12 December 2008

Extract from Official Record of Proceedings of the Council meeting on 9 January 2008

Assisting Employees in Recovering Outstanding Wages

3. **MR JASPER TSANG** (in Cantonese): *President, will the Government inform this Council whether it knows:*

(a) the number of cases in the past three years in which employees lodged claims at the Labour Tribunal (LT) to recover outstanding wages; among them, the respective numbers of cases in which the employees' claims were successful and unsuccessful, as well as the average time taken from the date of filing to conclusion in such cases;

(b) among the successful cases referred to in part (a), the average percentage of the amounts of compensation awarded by the LT to the employees concerned in the amounts they claimed, and the average percentage of the amounts of money ultimately received by such employees in the amounts awarded; and

(c) apart from implementing the measures which have been accepted by the Chief Justice of the Court of Final Appeal for solving problems in connection with the enforcement of the LT's awards, how the relevant authorities assist the employees who have lodged and succeeded in their claims to recover outstanding wages in recovering the amounts awarded, and whether they have plans to review the relevant policies?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President,

(a) According to the information provided by the LT, the number of cases handled, the number of awards made (where sums were awarded) and the average time taken from filing of claim to conclusion over the past three years are set out below:

Year	*2005*	*2006*	*2007 (January to November)*
(a) Number of cases handled by the Labour Tribunal	6 570	6 543	5 649
(b) Number of cases where monetary awards were made (including arrears of wages, wages in lieu of notice, severance payment, etc.)	5 349	5 383	4 393
(c) Average length of period from the date of filing to conclusion	41 days	47 days	55 days

As claims generally have multiple items and in some cases there are more than one claimants, it is difficult to differentiate the cases that are successful or unsuccessful. For instance, a claimant may succeed in one or two items of a claim but fail in the others. In the above table, row (b) only shows the number of awards for general reference. Besides, some claimants may withdraw their claims after they have settled directly with the defendants subsequent to filing.

(b) As regards the percentage of the amounts of compensation awarded by the Court as against the amounts claimed by the claimants under the items where awards were made, the figures for the past three years are set out below (the figures do not differentiate between the claims lodged by the employers and those lodged by the employees):

Year	*2005*	*2006*	*2007 (January to November)*
Amounts awarded	$325 m	$333 m	$235 m
Amounts claimed	$481 m	$518 m	$401 m
Percentage of amounts awarded as against the amounts claimed	68%	64%	59%

Furthermore, as some employees and employers settle the

judgment sum on their own, the LT has no available information on the percentage of the amounts of money ultimately received by the employees as against the amounts awarded by the Court.

(c) The Administration is concerned about the failure of some employees in obtaining the judgment sum awarded by the LT. In essence, the issue relates to the enforcement of awards made by the Judiciary. As in the case of all civil actions, the parties involved in the claim bear the responsibility of enforcing the judgment if it is not complied with.

The experience of Labour Department (LD) reveals that there are broadly two scenarios where the employees could not recover their wages in arrears despite having a LT award in their favour: (1) the employer has become insolvent; and (2) the employer is solvent and still in operation.

In the first scenario where the employer has ceased business or become insolvent, the LD will assist the affected employees to apply for *ex gratia* payment of wages in arrears and other termination payment from the Protection of Wages on Insolvency Fund. The LD will also refer such employees to the Legal Aid Department for assistance in instituting winding-up or bankruptcy proceedings against the insolvent employer.

In the second scenario where the employer is solvent and still in operation, the LD will initiate vigorous enforcement action against the employer. Upon receipt of complaints by employees on defaulted payment of LT awards, labour inspectors of the LD will conduct follow-up investigation on these cases. If there is sufficient evidence, we will prosecute employers who have violated the Employment Ordinance.

In 2007, the LD secured 171 convicted summonses in respect of cases of defaulted payment of LT awards, up

10.3% from 155 in 2006. Among these cases, one convicted employer was fined $70,000 while another was sentenced to immediate imprisonment for two weeks. These heavy sentences have sent a strong message to employers that breaches of the Employment Ordinance are serious offences.

Whilst the LD's enforcement action against wage default is confined to criminal prosecution and the employees concerned could not benefit from the criminal sanction imposed on the offenders, we believe that our stringent enforcement effort has served to strengthen the deterrent effect against wage defaults. To further enhance the deterrent effect, the maximum penalty for wage offences in the Employment Ordinance has, with effect from 30 March 2006, been substantially increased from a fine of $200,000 and imprisonment for one year to a fine of $350,000 and imprisonment for three years.

The Administration is aware of the problems faced by some employees in recovering the sum awarded by the LT in their favour. We will continue to work closely with the Judiciary to explore feasible improvement measures to safeguard the statutory rights of employees.

MR JASPER TSANG (in Cantonese): *President, I would like to follow up the last part of the Secretary's main reply. As the Secretary is also aware, the employees concerned usually may not be able to recover the sum awarded by the LT even though the LT has handed down judgment in their favour. In the former part of the main reply, the Secretary said that the recovery of outstanding wages is regarded by the Government as ordinary civil actions. Even though the LT has made a judgment, it is the responsibility of the employees concerned to enforce it. Should we treat wage defaults between employers and employees in such a manner? Should such cases be regarded as ordinary civil actions?*

The Secretary said that the Administration will explore feasible improvement measures to help the employees. But he did not mention

what these feasible measures are. Obviously, for instance, the Protection of Wages on Insolvency Fund (PWIF) will be triggered once the employer has ceased operation. My question is: Has the Administration considered that, under the circumstances where the employer is reluctant to pay the outstanding wages even though he is solvent and continues to operate his business after judgment has been made, the PWIF can also be triggered so that advance payment can be made to the employees and the Government will recover the money from the employer on behalf of the PWIF later on? The Government will be in a much more advantageous position to recover the debt from the employers than the employees as ordinary citizens. May I ask the Secretary whether the Government has seriously considered such an arrangement?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): I thank Mr TSANG for his question. In fact, Members in the Legislative Council have spent a lot of time studying the issue in the past few years. We have been discussing the issue with the relevant department of the Judiciary. The problem is very complicated because, as I said in the main reply, both civil actions and the enforcement of the Court's order are involved.

In practice, the LT is a segment of the civil proceedings as a whole and the Judiciary has also reviewed the problem. Members may remember that after recommendation was made by the Chief Justice, a report was issued in 2004 which was subsequently discussed in the Manpower Panel and the Steering Committee on Civil Justice Reform. In this aspect, we have to find some feasible solutions and the situation is very complicated as there are problems in terms of the legal principle and policy. And we hope that all these complicated matters can be sorted out as far as we can. However, if some problems of legal principle are really not surmountable, we have to examine what else can be done to deal with them.

However, I would like to emphasize that we have adopted a pragmatic approach in helping employees or employers who are aggrieved in our opinion. If the person concerned cannot get an order in his favour from the Court, under what circumstances …… as I

explained in the main reply, if he comes to the LD to reflect his problems to us, there are several teams of staff ready to help under our pragmatic approach.

First, as I said here before, if an employer becomes insolvent, we will certainly pay the wages in arrears from the PWIF. According to our estimation, more than 50% of the employees who have encountered difficulties and sought assistance from us can receive from the PWIF the wages due if judgment is made in their favour. Generally speaking, each one of them can get more than $20,000 on average. This is based on our statistics. In other words, half of the employees can, through these channels, recover the outstanding wages due because we consider this the most important and our duty is to protect the interests of employees.

Now, Mr TSANG asks whether payments can be made from the PWIF if the employers are not bankrupt. This is an important question of policy, and a problem concerning the relevant ordinance because it is clearly provided that the PWIF can be triggered only when the employer concerned is insolvent or bankrupt. As its name implies, it is a fund for the protection of wages on insolvency. So, regarding Mr TSANG's question, we are also giving thoughts to it which is in fact very complicated. However, we have been working very hard and studying the matter jointly with the Judiciary regarding the procedures, legal principle and policy.

To help the employees, the first thing to do is to help them recover the money. This is also the most important thing. Through the PWIF, as I just said, about half of the employees have recovered the outstanding wages due. Each one of them can get around $20,000 on average and the maximum amount of wages in arrears payable by the Fund is $36,000. In other words, assistance can be provided to most of the employees.

Besides, the second measure of our multi-pronged approach is certainly prosecution. If the employees are willing to act as witnesses, we will spare no effort. In the main reply, I said that in the past year there were 171 successful prosecution cases and two employers have been penalized. One of them was fined $70,000 while the other was

sentenced to two weeks' imprisonment. Members can imagine that the amount of wages in default by the employer who was sentenced to imprisonment is around $20,000 only. So, the message is crystal clear. The present situation, meaning the situation where employers refuse to pay the outstanding wages, has improved. We can see that improvement has been made.

Besides, if the case is brought before the Court, the judge may also exercise discretion under section 65 of the Employment Ordinance to order that the wages in arrears be repaid. So, we have adopted a multi-pronged approach to help employees in a holistic manner. But I fully agree that we have to consider the way forward holistically in dealing with the problem. We fully understand Members' concern and are working very hard on this.

MR KWONG CHI-KIN (in Cantonese): *In part (a) of the main reply, the Secretary listed the number of cases in the past three years and the average length of period from the date of filing to conclusion. We can see that there were 6 500-odd cases in 2005 and the number dropped dramatically to 5 600-odd cases in 2007. However, the average length of period from the date of filing to conclusion increased drastically, from 41 days in 2005 to 55 days in 2007. Why has the time required increased while the number of cases has decreased? Is it because of insufficient resources for the Court? What measures can be adopted in order to make improvement?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, regarding Mr KWONG's supplementary question, we are also very concerned about the situation and we have made enquiries with the Judiciary.

The situation is: According to their explanation, in the past few years, requests have been made in many such cases handled by the LT for postponement on the grounds that some of them are under investigation by the police, such as investigation on whether there is forgery of documents or giving false testimony, and some are under investigation by inspectors of the LD on whether there is default on payment of wages or underpayment of wages, particularly those

concerning foreign domestic helpers which are very serious. As it takes much time to undertake these tasks, the length of period has therefore been extended. Why has the length of period been extended with a decreased number of cases? Because the postponement has led to the so-called delayed cases, thus resulting in prolonged hearings.

However, the actual situation is not like this. In an analysis with the Judiciary Administrator again this morning, I was given a clear answer, and that is, more than 80% of the cases are in fact concluded in one month. In other words, it takes only one month or 30 days from the date of filing to conclusion. But the data on average are inflated because it is necessary to calculate the averages.

Hence, the situation does not reflect that there is a lack of efficiency. In reality it has reflected the complexity of the cases and the presence of criminality which should be investigated by the police and followed up by the inspectors of the LD. Delay is therefore resulted when our staff have to undertake these tasks.

MR TAM YIU-CHUNG (in Cantonese): *President, in the main reply, the Secretary mentioned the second scenario where the employer is solvent and still in operation. Under such a situation, if the employer is still unwilling to pay wages to the employees, the LD may collect evidence again to initiate prosecution. The Secretary also mentioned that 171 prosecutions had been initiated.*

May I ask the Secretary whether any difficulties were encountered in the process of collecting evidence or instituting prosecution? Because I can see that the number of prosecutions is not very high. Are there any difficulties in the gathering of evidence? What are the difficulties in this process? Besides, will the employers pay the outstanding wages to the employees after the imposition of penalty?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): I am grateful for Mr TAM's supplementary question. Generally speaking, the standard of proof is very stringent. As we all know, the standard of proof is stricter in criminal offences. First, we should have sufficient

evidence for instituting prosecution; second, the employees should be willing to act as prosecution witnesses.

So, very often, some people are wary of troubles or avoid going to the Court. And since this is a criminal action, it will not take place in a tribunal again. Perhaps they do not have time to testify against the employers. As a result, no more follow-up action can be taken at this stage. However, if the employees are co-operative and there is sufficient evidence, we will certainly act in accordance with the law. So, Members can see that prosecution was initiated in 171 cases last year, a 10% increase compared with the year before, with two employers being severely punished. One of them is put behind bars for two weeks with immediate effect. The punishment is very severe because the two weeks' imprisonment is imposed for having defaulted on wages of $20,000 only. The penalty is harsh and the law is stringent. I think the message delivered will have a certain deterrent effect.

We will continue to call on the employees to fully co-operate with us when they have encountered such a situation and provide more information and evidence to us. We will not spare any efforts in prosecuting the defaulting employers.

MR TAM YIU-CHUNG (in Cantonese): *President, the Secretary has not answered one point, and that is, after judgment has been made on the 171 cases and the employers have been fined, have the employers repaid the wages in arrears? Or the cases are closed after the employers' fines were paid?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, Mr TAM has asked a very good question, a question nailing the crux because the defendants may be jailed or fined after a judgment has been handed down in a criminal action. However, under certain circumstances, the judge may exercise his discretion to order the defendants to repay the outstanding wages pursuant to section 65 of the Employment Ordinance. But I have to emphasize that the judge has the discretionary power to decide whether or not the section be invoked. The section was applied in 60-odd cases last year. Some of the

employees were able to recover their wages in arrears while some might not even though judgment had been made. So, Members should understand that the problem we are facing now is most complicated.

MR LEE CHEUK-YAN (in Cantonese): *President, the Secretary said that a multi-pronged approach would be adopted in order to help employees to recover their outstanding wages, severance pay, payment in lieu of notice and other benefits under the labour law. In fact, after hearing the specific measures of the approach, I think they are quite ineffective in rendering assistance to employees because the Secretary has also admitted that half of the employees have not recovered their outstanding wages.*

From the perspective of the workers, if they want to recover the money, they have to go through a process as harsh as a steeplechase. They have to go to the LD and the LT. If the LT does not give a ruling that the wages in arrears be repaid, then no one can help them. Eventually they have to seek assistance from the Bailiff and the cost is $5,000. If the Bailiff cannot help them, they have to go to the Legal Aid Department which will require a means test. If they are screened out by the means test, there is basically no hope for them to recover the outstanding wages.

So, President, may I ask the Secretary whether he can promise to help resolve the problem radically? And the only way to do so is to convince the Judiciary. There is no justification for the Judiciary to regard the LT as an ordinary civil court just like the Small Claims Tribunal because they are workers and the money at stake is their hard-earned money. So, their cases should be dealt with in a specific and unique manner and special assistance should be provided to help them recover the money. May I ask the Secretary whether he can promise that the problem can be resolved radically in this year? Are there any chances that further progress can be made in your negotiations with the Judiciary?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, Mr LEE's concern is exactly the same as ours and we

attach importance to the problem which, as we all know, has existed for a long time. We have discussed the problem repeatedly in the relevant committee and the Chief Justice has also set up a working group for this. As I pointed out in the main reply, we will continue to work hard and keep in close contact with the Judiciary and the relevant departments in the hope that some practicable solutions can be found to solve the problem. This is a problem which has disturbed the labour sector for a very long time and I fully recognize this. If there is an answer, I will immediately …… If a solution is found, there will be no more delay. So, please give us some room and time so that we can follow up the matter and make more efforts.

MR LEE CHEUK-YAN (in Cantonese): *President, he did not say whether he could promise that the problem would be solved in this year.*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, shall we say by the end of 2008 instead of saying in which year? More time will allow more flexibility and we can work hard for this purpose. We will pull our brains together and hold discussions again in the Administration of Justice and Legal Services Panel in order to express our views.

PRESIDENT (in Cantonese): We have spent more than 18 minutes for this question. The fourth question.

Appendix II

Enforcement of Labour Tribunal Awards

Relevant papers

Meeting	**Meeting Date**	**Papers**
Panel on Administration of Justice and Legal Services and Panel on Manpower	24 May 2004	Research Report on "The Operation of Labour Tribunals and Other Mechanisms for Resolving Labour Disputes in Hong Kong and Selected Places" [RP06/03-04] Administration's paper on "Measures to improve referral of unsettled cases of labour disputes and claims from the Labour Department to the Labour Tribunal" [LC Paper No. CB(2)2424/03-04(01)] Judiciary Administration's letter dated 17 May 2004 on "Operation of the Labour Tribunal" [LC Paper No. CB(2)2424/03-04(02)] Judiciary Administration's paper on "Practice and Procedure in the Labour Tribunal" [LC Paper No. CB(2)1932/02-03(02)] Administration's paper on "Conciliation service provided by the Labour Department and the system of referring unsettled cases to the Labour Tribunal" [LC Paper No. CB(2)2527/02-03(01)] Judiciary Administration's letter dated 21 August 2003 [LC Paper No. CB(2)3025/02-03(01)] Minutes of meeting [LC Paper No. CB(2)3167/03-04]

Meeting	**Meeting Date**	**Papers**
Panel on Administration of Justice and Legal Services and Panel on Manpower	9 November 2004	Report of the Working Party on the Review of the Labour Tribunal published in June 2004 [LC Paper No. CB(2)136/04-05] Minutes of meeting [LC Paper No. CB(2)327/04-05]
Panel on Administration of Justice and Legal Services and Panel on Manpower	13 December 2004	Minutes of meeting [LC Paper No. CB(2)726/04-05]
Panel on Administration of Justice and Legal Services	31 March 2005	Minutes of meeting [LC Paper No. CB(2)1590/04-05]
Panel on Manpower	16 February 2006	Administration's paper on "Enforcement of Labour Tribunal Awards" [LC Paper No. CB(2)1086/05-06(04)] Minutes of meeting [LC Paper No. CB(2)1412/05-06]
Panel on Manpower	24 April 2008	Administration's paper on "Enforcement of Labour Tribunal Awards" [LC Paper No. CB(2)1662/07-08(04)] Administration's letter dated 17 July 2008 on "Enforcement of Labour Tribunal Awards" [LC Paper No. CB(2)2649/07-08(01)] Minutes of meeting [LC Paper No. CB(2)2013/07-08]
Panel on Manpower	8 July 2008	Administration's paper on "Enhancement Measures on Enforcement of Labour Tribunal Awards" [LC Paper No. CB(2)2480/07-08(02)] Minutes of meeting [LC Paper No. CB(2)2755/07-08]