

**立法會**  
**Legislative Council**

LC Paper No. CB(4)955/13-14  
(These minutes have been seen  
by the Administration and the  
Judiciary Administration)

Ref : CB4/BC/4/13

**Bills Committee on Administration of Justice  
(Miscellaneous Provisions) Bill 2014**

**Minutes of the first meeting  
held on Tuesday, 3 June 2014, at 2:30 pm  
in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon Dennis KWOK (Chairman)  
Hon James TO Kun-sun  
Hon TAM Yiu-chung, GBS, JP  
Hon Abraham SHEK Lai-him, GBS, JP  
Hon Ronny TONG Ka-wah, SC  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Alan LEONG Kah-kit, SC  
Hon WONG Yuk-man  
Hon YIU Si-wing

**Member absent** : Hon TANG Ka-piu

**Public officers  
attending** : Agenda item II

Mr Howard LEE  
Assistant Director of Administration (3)

Mr Esmond LEE  
Deputy Judiciary Administrator (Development)

Ms Wendy CHEUNG  
Assistant Judiciary Administrator (Development)

Miss Elaine NG  
Senior Government Counsel  
Department of Justice

Mr Henry CHAN  
Government Counsel  
Department of Justice

**Clerk in attendance** : Ms YUE Tin-po  
Chief Council Secretary (4)3

**Staff in attendance** : Mr YICK Wing-kin  
Assistant Legal Adviser 8

Mr Joey LO  
Senior Council Secretary (4)3

Miss Mandy NG  
Council Secretary (4)3

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Action

**I. Election of Chairman**

Mr Dennis KWOK was elected Chairman of the Bills Committee.

**II. Meeting with the Administration and the Judiciary Administration**

(LC Paper No. CB(3)582/13-14     -- The Bill

File Ref.: SC/CR/2/1/65 PT11     -- Legislative Council Brief  
issued by the Administration  
Wing of the Chief Secretary  
for Administration's Office and  
Judiciary Administration

LC Paper No. LS51/13-14     -- Legal Service Division  
Report

LC Paper No. CB(4)690/13-14(02) -- Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members)

LC Paper No. CB(4)690/13-14(04) -- Assistant Legal Adviser's letter dated 23 May 2014 to the Administration)

Discussion

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration and the Judiciary Administration

3. The Judiciary Administration was requested to provide updated statistics on the following:

- (a) successful and unsuccessful rates of as of right appeals disposed of in the Court of Final Appeal ("CFA") filed since July 1997;
- (b) number of substantive appeals (including as of right appeals) disposed of in the CFA since July 1997; and
- (c) leave applications disposed of in the CFA since July 1997.

4. The Judiciary Administration was requested to provide information on the factors that might be considered by the Judges under the "or otherwise" provision in section 22(1)(b) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), and whether the CFA had explained what such factors were in any precedent cases.

5. The Judiciary Administration was also requested to consider incorporating amendments to the Criminal Procedure Ordinance (Cap. 221) to strengthen privacy protection for victims and witnesses in fear in sexual offence cases, such as allowing the use of screen to shield victims and witnesses in fear from the accused while testifying in court.

**III. Any other business**

6. The Chairman advised that the next meeting would be scheduled upon receipt of the requisite information provided by the Administration and the Judiciary Administration.

*(Post-meeting note: With the concurrence of the Chairman, the next meeting was scheduled to be held on 24 July 2014.)*

7. There being no other business, the meeting ended at 4:05 pm.

Council Business Division 4  
Legislative Council Secretariat  
22 July 2014

**Proceedings of the first meeting of  
Bills Committee on Administration of Justice (Miscellaneous Provisions) Bill 2014  
on Tuesday, 3 June 2014, at 2:30 pm  
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda item I – Election of Chairman</b>			
000058 – 000154	Mr James TO Kun-sun Mr Ronny TONG Mr WONG Yuk-man Mr Dennis KWOK	Election of Chairman	
<b>Agenda item II – Meeting with the Administration and the Judiciary Administration</b>			
000300 – 000739	Chairman Judiciary Administration	Briefing by the Judiciary Administration	
0000740 – 0001444	Chairman Mr Ronny TONG Judiciary Administration	<p>Mr Ronny TONG expressed concern about the amendments to the Hong Kong Court of Final Appeal Ordinance ("HKCFAO") (Cap. 484) on the abolition of as of right appeal mechanism for civil cases to the Court of Final Appeal ("CFA"). Referring that appeals to the CFA would only be allowed if the question involved was of great general or public importance under section 22(1)(b) of HKCFAO, Mr TONG opined that the existing requirement under that subsection posed a high threshold to the leave for appeal applicants. He also opined that if the as of right appeal mechanism was to be abolished, the factors that might be considered by the Judges under the "or otherwise" provision in section 22(1)(b) should be spelt out clearly in the HKCFAO. In practice, the CFA would only grant leave when there was "perceived grave injustice".</p> <p>The Judiciary Administration pointed out that the CFA did not operate as a second court of appeal operating on the same basis as the Court of Appeal of the High Court. Linking a right of appeal to an arbitrary financial limit was objectionable as a matter of principle. The abolition of the as of right appeal mechanism would not prevent litigants from applying for leave to appeal under the existing procedures and the CFA would hear meritorious appeals. Following the proposed abolition of the as of right appeal mechanism, all appeals in civil matters to the CFA would be subject to discretionary leave. All such appeals should be heard by the CFA only if the question involved in</p>	The Judiciary Administration to follow up as per paragraph 3(a) to (c) and 4 of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>the appeal was one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the CFA for decision. The Judiciary Administration stressed that whilst the CFA primarily dealt with questions of "great general or public importance", the "or otherwise" limb would also be taken into consideration.</p>	
001445 – 002844	<p>Chairman Mr YIU Si-wing Mr Ronny TONG Dr Priscilla LEUNG Judiciary Administration</p>	<p>Discussion on the inadequacies of the situation where the CFA was prevented by unmeritorious appeals from hearing in good time genuine and much more meritorious appeals.</p> <p>In response to Mr YIU Si-wing's enquiry about the statistics on the extent of the delays caused by unmeritorious appeals, the Judiciary Administration advised that statistics on delays were not maintained as it was difficult to define or quantify delays. As a matter of principle, delays were unfair to not only the successful parties in litigation of a particular appeal case, but also litigants in other cases who had deserving causes before the CFA.</p>	
002845 – 004008	<p>Chairman Mr WONG Yuk-man Judiciary Administration</p>	<p>Mr WONG Yuk-man enquired about the factors to be considered by District Judges when deciding whether they should deliver the reasons for the verdict orally or in writing under the new section 80(2) of the District Court Ordinance (Cap. 336).</p> <p>The Judiciary Administration advised that District Judges would give due consideration to such factors as the likely duration needed for the oral delivery, the complexity of a case, availability of legal representation and background of the parties concerned. The Judiciary did not consider it appropriate to spell out such factors in the Bill. A District Judge would still have the discretion to orally deliver the reasons for a verdict.</p> <p>Mr WONG also noted that of the 27 civil cases filed in the CFA in 2012, six of them were as of right appeals. Of these six as of right appeals, two (i.e. 33%) were successful. Mr WONG further noted that the number of leave applications for criminal and civil appeals allowed by the CFA from 2008 to 2012 only constituted a small percentage of leave applications disposed of in the CFA during the same period, i.e. from 12% to 28%. Mr WONG expressed serious reservation on the abolition of the as of right appeal mechanism</p>	

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		<p>simply because of the low success rate of such appeal cases and to alleviate the workload of the CFA. He considered that more substantial justifications should be given to support the abolition of the as of right mechanism.</p> <p>The Judiciary Administration advised that the abolition of the as of right appeal mechanism was not tantamount to deprivation of the right to appeal. It only meant the appellant had to apply to the CFA for leave to appeal. In other comparable common law jurisdictions, there was no automatic right of appeal. The abolition was not aimed at alleviating the workload of the CFA.</p>	
004009 – 005850	Chairman Mr YIU Si-wing Mr TAM Yiu-chung Mr Ronny TONG Judiciary Administration	<p>Mr YIU Si-wing opined that amending section 80 of the District Court Ordinance to dispense with the requirement for a District Judge to orally deliver the reasons for the verdict and any sentence might provide too much discretionary power to the District Judge in this respect. The District Judge should be required at least to provide a gist of the reasons for the verdict depending on the word count of the verdict. Mr Ronny TONG and the Chairman shared a similar view and said that the CFA already had similar arrangements for the provision of a gist.</p> <p>The Judiciary Administration advised that the proposed amendment would allow the Judges the flexibility to hand down the reasons for the verdict in writing in appropriate cases to save the legal costs of the litigating parties and court resources. The provision of a press summary for each judgment of the CFA was to facilitate the media's reporting on such judgment. The Judiciary Administration had no intention to extend the practice to other levels of court at this juncture. The provision of a gist depending on the word count of the verdict as suggested by Members was outside the scope of the Bill in question as it was likely to involve different levels of court.</p>	
005851– 011610	Chairman Mr Paul TSE Dr Priscilla LEUNG Judiciary Administration	<p>Discussion on appeal in civil matters to the highest appellate courts in other comparable common law jurisdictions.</p> <p>In response to Mr Paul TSE's enquiry about statistics on the number of leave for appeal to the CFA granted on the basis of the "or otherwise" provision,</p>	

Time marker	Speaker	Subject(s)	Action required
		the Judiciary Administration advised that no such statistics were maintained although leave for appeal had been granted on such basis in previous cases.	
011611– 011836	Chairman Dr Priscilla LEUNG Judiciary Administration	Discussion on the textual difference between the Chinese and English versions of the amendment to section 79A (interpretation) of the Criminal Procedure Ordinance (Cap. 221).	
011837 – 012915	Chairman Mr Paul TSE Wai-chun Dr Priscilla LEUNG Judiciary Administration	<p>Discussion on the possibility of incorporating amendments to the Criminal Procedure Ordinance (Cap. 221) in the Bill to strengthen privacy protection for victims and witnesses in fear in sexual offence cases.</p> <p>The Judiciary Administration advised that it was outside the scope of the present Bill to incorporate such amendments to the Criminal Procedure Ordinance. The issue should be dealt with in a separate exercise.</p>	The Judiciary Administration to follow up as per paragraph 5 of the minutes.
012916– 013329	Chairman Judiciary Administration	<p>Discussion on requiring in law the uploading of verdict on the Internet.</p> <p>The Judiciary Administration advised that the uploading of verdict on the Internet was an administrative procedure rather than a statutory requirement. The proposal would need to be further studied as necessary as it would also involve ordinances other than the District Court Ordinance.</p>	
013330– 013434	Chairman Judiciary Administration	<p>Invitation of views</p> <p>Members agreed that it was unnecessary to hold a meeting to receive views from members of the public on the Bill. The Chairman instructed that a notice should be posted on the Legislative Council website to invite written submissions from stakeholders such as the Labour Advisory Board.</p> <p>The Chairman reminded the Judiciary Administration to provide a written response to ALA's questions in the letter dated 23 May 2014.</p>	