

立法會
Legislative Council

LC Paper No. CB(4)175/14-15
(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 third meeting
held on Wednesday, 15 October 2014, at 8:30 am
in Conference Room 2B of the Legislative Council Complex

Members present : Hon TAM Yiu-chung, GBS, JP (Acting Chairman)
Hon James TO Kun-sun
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 YIU Si-wing

Members absent : Hon Dennis KWOK
Hon Abraham SHEK Lai-him, GBS, JP
Hon WONG Yuk-man
Hon TANG Ka-piu, JP

Public officers : Agenda item II
Attending
Ms Christine WAI
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

Ms Angie LI
Senior Government Counsel

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

Action

Mr TAM Yiu-chung was elected by members attending the meeting as the acting Chairman during the absence of the Chairman.

I. Confirmation of minutes of meeting

LC Paper No. CB(4)17/14-15 -- Minutes of meeting held on 24
July 2014

2. The minutes of the meeting held on 24 July 2014 were confirmed.

II. Meeting with the Administration and the Judiciary Administration

LC Paper No. CB(4)13/14-15(01) -- Administration's responses to
follow-up actions arising
from the meeting on 24 July
2014

- LC Paper No. CB(4)1075/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 24 July 2014
- LC Paper No. CB(4)13/14-15(02) -- Administration's paper on provision of information requested at the meeting on 3 June 2014
- LC Paper No. CB(4)828/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 3 June 2014
- LC Paper No. CB(4)982/13-14(01) -- Administration's response on the follow-up actions arising from the discussion at the meeting on 3 June 2014
- LC Paper No. CB(4)1025/13-14(01) -- Letter from Hon TANG Ka-piu dated 18 August 2014 (Chinese version only)
- LC Paper No. CB(3)582/13-14 -- The Bill
- LC Paper No. CB(4)690/13-14(02) -- Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members)
- 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(04) -- Assistant Legal Adviser's letter dated 23 May 2014 to the Administration

- LC Paper No. CB(4)818/13-14(01) -- Administration's reply dated 13 June 2014 to Assistant Legal Adviser's letter dated 23 May 2014
- LC Paper No. CB(4)947/13-14(01) -- Submission from the Law Society of Hong Kong dated 3 July 2014 (English version only)
- LC Paper No. CB(4)947/13-14(02) -- Submission from the Labour Advisory Board dated 14 July 2014 (Chinese version only)
- LC Paper No. CB(4)960/13-14(01) -- Administration's response to submission from the Labour Advisory Board dated 14 July 2014 as set out in LC Paper No. CB(4)947/13-14(02)
- LC Paper No. CB(4)947/13-14(03) -- Submission from the Hong Kong Bar Association dated 18 July 2014 (English version only)
- LC Paper No. CB(4)690/13-14(03) -- Paper on Administration of Justice (Miscellaneous Provisions) Bill 2014 prepared by the Legislative Council Secretariat (Background brief)

Discussion

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

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

4. The Judiciary Administration was requested to:
- (a) refine the presentation of the figures provided in Annex B to LC Paper No. CB(4)13/14-15(02) to show the breakdown of figures for as of right appeals and non-as of right appeals disposed of in the Court of Final Appeal ("CFA") since 2001;
 - (b) refine the presentation of the figures provided in Annex C to LC Paper No. CB(4)13/14-15(02) to show the actual outcome of the substantive appeals for cases with leave allowed by the CFA since 2001; and
 - (c) clarify in general whether administrative appeals, i.e. judicial reviews, might be submitted to the CFA as civil appeals (as against criminal appeals); if so, whether judicial reviews might be submitted to the CFA under the as of right appeal arrangements.

III. Any other business

5. The Bills Committee agreed that the next meeting should be held to follow up on the outstanding issues raised at this meeting, including the scrutiny of Part 5 of the Bill regarding abolition of the as of right arrangements for civil appeals, and the Committee Stage amendments proposed by the Judiciary Administration. The Chairman would be consulted on the date of the next meeting.

(Post-meeting note: With the concurrence of the Chairman, the next meeting was scheduled to be held on 25 November 2014.)

6. There being no other business, the meeting ended at 9:20 am.

**Proceedings of the third meeting of
Bills Committee on Administration of Justice (Miscellaneous Provisions) Bill 2014
on Wednesday, 15 October 2014, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Confirmation of minutes of meeting			
000724 – 000836	Acting Chairman	Confirmation of minutes of the meeting held on 24 July 2014	
Agenda item II – Meeting with the Administration and the Judiciary Administration			
000837 – 001828	Acting Chairman Judiciary Administration	Briefing by the Judiciary Administration on its response to the issues raised at the meeting on 3 June 2014 (LC Paper No. CB(4)13/13-14(02)).	
001829 – 002440	Acting Chairman Mr Ronny TONG Judiciary Administration	<p>Mr Ronny TONG expressed concern that certain meritorious cases might not be heard by the Court of Final Appeal ("CFA") if the as of right appeal mechanism under the Hong Kong Court of Final Appeal Ordinance ("HKCFAO") (Cap. 484) was to be abolished. Noting 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.</p> <p>The Judiciary Administration pointed out that 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 continue to 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 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>	
002441 – 003120	Acting Chairman Dr LEUNG Mei-fun Judiciary Administration	Dr LEUNG Mei-fun opined that the reasons/factors for considering an application for leave under the "or otherwise" limb should be more clearly set out if the as of right appeal mechanism was to be	The Judiciary Administration to follow up as per paragraph 4

Time marker	Speaker	Subject(s)	Action required
		abolished. The Judiciary Administration pointed out that instead of rigidly setting out the considerations for approving or rejecting an application for leave under the "or otherwise" limb, it would be more appropriate to allow maximum flexibility for the court on this matter, and let the jurisprudence on this limb further develop on its own.	(a) and (b) of the minutes
003121 – 003636	Acting Chairman Mr YIU Si-wing Judiciary Administration	Mr YIU Si-wing's enquiry and the Judiciary Administration's response on its assessment of the effect of the abolition of the as of right appeal mechanism on the successful rate of applications for leave to appeal.	
003637 – 003800	Acting Chairman Judiciary Administration ALA	ALA's enquiry and the Judiciary Administration's response on whether administrative appeals, i.e. judicial reviews, might be submitted to the CFA as civil appeals (as against criminal appeals); if so, whether judicial reviews might be submitted to the CFA under the as of right appeal arrangements. ALA's enquiry and the Judiciary Administration's response on the proposed dissemination methods of the reasons for verdict, and the relevant mechanism against the decision of District Judges on the mode of delivery of the reasons for the verdict.	The Judiciary Administration to follow up as per paragraph 4(c) of the minutes
003801 – 005050	Acting Chairman Judiciary Administration	Briefing by the Judiciary Administration on its response to the issues raised at the meeting on 24 July 2014 (LC Paper No. CB(4)13/14-15(01)).	
005051 – 005140	Acting Chairman Judiciary Administration	Date of next meeting	