

# Standing Committee on Practitioners Affairs

The Standing Committee oversees the work of 22 Committees, four Sub-Committees and 11 Working Parties. Members met formally on nine occasions. A decision to expand the membership of the Committee was implemented by appointing non-Council members to sit on the Committee; four members resigned and six new members were co-opted.

## **Sales and Purchase Agreements**

The Committee discussed the views of the Property Committee on a proposal to introduce a standard sale and purchase agreement and noted its members were unable to reach consensus on adoption of certain clauses. It was noted the Bilingualism Committee had favoured the publication of a standard sale and purchase agreement by The Law Society so this document could be translated into Chinese, and assist the public to understand the contents of this important conveyancing document. A report was prepared for the Standing Committee on Policy and Resources recommending the publication of the document but a decision was eventually made that, on balance, the project would not be beneficial for The Law Society.

## **Independent Non Executive Directors (“INEDs”)**

A member had written to seek The Law Society’s support to lobby the Hong Kong Stock Exchange (“HKEx”) to amend its interpretation of the Listing Rules on INEDs by allowing solicitors to be eligible for appointment. The Committee entered into correspondence with HKEx and a meeting took place with the Executive Vice President in March to discuss Rule 3.10(2) of the Listing Rules. Despite The Law Society’s representations, HKEx was not convinced of the need to amend its interpretation of the rule, and suggested as an alternative, The Law Society should enhance its members’ understanding of the role of directors and INEDs. The Standing Committee on Standards and Development agreed to organise appropriate courses.

## **Retainer Letters**

The Committee reviewed a report by the Working Party on Retainer Letters and endorsed its recommendation that The Law Society should publish a series of checklists and sample clauses as templates to assist members to draft

appropriate retainer letters. An application was made to the Standing Committee on Policy and Resources for funding and a budget was approved for the project. A circular inviting member firms to provide an expression of interest was issued on 15 November and it is anticipated the project will be completed by mid-2007.

## **Domestic Violence**

The Committee reviewed and endorsed a proposal by the Family Law Committee to establish a panel of volunteers to provide pro bono assistance to victims of domestic violence. The Standing Committee co-ordinated with the relevant stakeholders such as the Police, various Non Government Organisations and the Social Welfare Department which welcomed the scheme and agreed to provide full support for its implementation.

## **Clementi Report**

The Committee maintained a watching brief on the developments of the UK Government’s implementation of the recommendations made in the *Clementi Report*; the UK Government has circulated a draft *Legal Services Bill* which provides the legislative framework to split the representative and regulatory roles of the Law Society of England and Wales.

## **Anti-Competition Law**

Members noted the publication of the *“Report on the Review of Hong Kong’s Competition Policy”* by the Competition Policy Review Committee in June and decided to convene a Working Party to provide comment on the Report and on any draft legislation. A Council member, three members of the Standing Committee, together with a representative from the Probate, Intellectual Property and Civil Litigation Committees now sit on the Working Party.

## **Information Technology**

Members discussed how the Law Society could assist the general membership to embrace Information Technology (“IT”) in their practices; a report was prepared for the Standing Committee on Policy and Resources for funding to conduct a review of legal software in the market and provide basic IT support for members.

# Standing Committee on Practitioners Affairs

## **Trustee Ordinance**

Members considered a request from the Society of Trust and Estate Practitioners ("STEP") on its proposal to amend the *Trustee Ordinance*. A member of the Committee met with a representative from STEP and discussed its plan of action which would include lobbying senior members of the Government and LegCo members.

## **Members of the Committee:**

Junius K.Y. HO (*Chairman*)

Simon H. BERRY

Geoffrey N. BOOTH

Simon M.Y. CHAN

Eric C.H. CHIU (resigned in December)

E. John DAVISON

Lester G. HUANG (resigned in October)

Stephen W.S. HUNG

Andrew JEFFRIES

Alex T.H. LAI

Ambrose S.K. LAM

J.C. Nicholas MILLAR

Billy W.Y. MA (resigned in October)

NG Ching Wo

Paul C.Y. TAN

Cecilia K.W. WONG

Kevin K.F. YAM

Dieter L.T. YIH (resigned in October)

Secretary: Director of Practitioners Affairs

## **ADR COMMITTEE**

The ADR Committee met formally on one occasion during the year but nevertheless was busy promoting the use of ADR by practitioners.

### **Mediation**

There has been an increase in the recognition of the benefits of mediation during the year. The Judicial Studies Board held a training programme in late March, which included a series of lectures and a mock mediation, and some members accepted an invitation to attend the 3-day programme. The Judiciary also issued a Practice Direction

6.3 on "*Voluntary Mediation of Cases in the Construction and Arbitration List*"

The Law Society updated its Panel of Solicitors offering counselling in mediation and a circular was re-issued on 13 March.

The Chief Justice convened a Working Party to review mediation in Hong Kong, and subsequently appointed two solicitors to sit in their personal capacity.

The Secretary for Justice held discussions on a proposal to organise a Joint Conference on Mediation in 2007.

The Committee organised a lecture on 14 November with the themes of:

- *How Mediation has benefited both the clients and the legal profession - the Australian experience*
- *Building a Mediation Practice: Hong Kong*

The talks were given by John Spender QC and Ian Hanger QC respectively; it was well attended and received by attendees.

### **ADR Service Manual**

The Committee's proposal to provide an ADR Service Manual to member firms and to the public was finally realised when the ADR Folder, in bilingual format, was published and distributed on 25 September. The project will provide a range of ADR services to the public with the initial scheme offering a mediation service on legal costs. It is anticipated additional material will be circulated as acceptance of ADR services becomes more widespread.

### **Lands Tribunal Pilot Scheme on Building Management Cases**

The Lands Tribunal has put forward a proposal to introduce mediation for suitable building management cases. Two members attended a meeting with the President of the Lands Tribunal on 14 December to discuss the Judiciary's proposals.

The Law Society will be reviewing the matter and it is anticipated a Pilot Scheme will be introduced in late 2007.

### **Joint Consultative Committee (“JCC”) Meetings**

Representatives attended the JCC meetings at the Hong Kong International Arbitration Centre on 15 March and 13 September.

### **Members of the Committee:**

Geoffrey N. BOOTH (*Chairman*)  
 Glenn R.A. HALEY  
 Caroline S.P. LEE  
 LEE Wai Man  
 S. Dean LEWIS  
 Maureen E. MUELLER  
 Sylvia W.Y. SIU  
 Kenneth D. SOMMERVILLE  
 Norris H.C. YANG  
 Helena S.Y. YUEN

Secretary: Director of Practitioners Affairs

## **BILINGUALISM COMMITTEE**

The Bilingualism Committee has taken the following steps this year to assist the profession to meet the challenges of a developing bilingual legal system:

### **Bilingual Conveyancing Documents - Updating exercise**

The Committee continued the updating exercise on the bilingual conveyancing documents it published in 2000, including a thorough review of the proposed amendments to the Chinese translations of the Consent Scheme and Non-Consent Scheme documents, taking into account the changes made to the English version since 2000. It sought clarification from the Property Committee on the appropriate interpretation on some of the clauses in the forms.

### **Proposed Courses on “Use of Chinese in Legal Practice”**

The Committee reviewed the CPD courses offered by The Law Society in Chinese and members’ feedback. A Sub-committee was convened and recommended The Law Society should conduct a series of courses to promote

Chinese language advocacy skills of members in different types of legal proceedings. Judges experienced in Chinese legal proceedings were invited to conduct courses in Civil Litigation, Lands Tribunal, Matrimonial and Criminal Litigation.

### **Proposed Structured Advocacy Courses in Chinese**

The Committee was consulted by the CPD Committee on the proposed outline of a Structured Advocacy Course, which included “*Chinese Advocacy*” as one of its modules. Given the wider use of Chinese in court proceedings, the Committee recommended developing a separate series of Structured Advocacy Courses in Chinese and enlisting the support of the Judiciary.

### **Translation of Chinese Judgments into English**

The Committee continued its discussion with the Judiciary on English translations of all Chinese judgments. This was raised with the Judiciary in 2002 when the Judiciary indicated that Chinese judgments having a “*reference*” value would be translated into English. The Committee sought a change in this policy and in response, the Judiciary established a Screening Committee to systematically identify Chinese judgments of jurisprudential value for translation into English. As only some Chinese judgments have been translated into English, the Judiciary has issued a Practice Direction on “*Citation of judgments written in Chinese at hearings conducted in English*”.

### **Members of the Committee:**

Stephen W.S. HUNG (*Chairman*)  
 Eric T.M. CHEUNG (resigned in March)  
 CHEUNG Wai Hing  
 Jacqueline S.T. CHIU  
 IP Shing Hing  
 Ambrose S.K. LAM  
 Fiona K.C. LI  
 Angelina M.W. LUK  
 Peter S.L. MA  
 MA Shiu Ngok  
 TAM Shuk Fong  
 TANG Wai Chung  
 Tony Y.H. YEN

Secretary: Assistant Director, Practitioners Affairs

# Standing Committee on Practitioners Affairs

## CIVIL LITIGATION COMMITTEE

The Civil Litigation Committee met on four occasions during the year.

### Civil Justice Reform (“CJR”)

The Committee noted the publication of the Judiciary’s Consultation Paper on *“Proposed Legislative Amendments for the Implementation of the Civil Justice Reform”* and that the Working Party on CJR would prepare in-depth submissions on behalf of The Law Society.

### Order 62 R.H.C.

Members met with the Registrar and Taxing Masters on 13 October to continue the dialogue on improving procedures to make taxation simpler and cheaper. The following matters were discussed at the meeting:-

- Updating the rules on taxation,
- The format of the bill of costs,
- Removal of outdated mechanical items in Part II of the Second Schedule to Order 62
- Review of party and party rates.

The Registrar agreed to remind Taxing Masters of the need to be flexible in relation to party and party rates for appropriate cases where practitioners can justify an uplift from the highest rate, currently \$4,000 per hour.

### Gross Sum Assessment (“GSA”)

The Taxing Masters indicated they wanted to increase the use of GSAs. The Committee agreed to re-issue a Law Society circular on GSA and remind members of the requirement to be prepared to argue costs at the end of interlocutory applications.

### Lands Tribunal

#### (a) Lands Tribunal Review

Members reviewed a paper on the draft Lands Tribunal (Amendment) Rules 2006 noting they were not controversial. The Committee endorsed the Judiciary’s proposal to streamline procedures for the re-possession of premises.

#### (b) Pilot Scheme for Building Management Cases

At the end of September, the Judiciary consulted The Law Society on a Pilot Scheme for Building Management Cases in the Lands Tribunal with the purpose of *“facilitating the more efficient, expeditious and fair disposal of Building Management Cases”*. Members were invited to review draft procedural Directions and a proposal to introduce alternative dispute resolution as an alternative to proceeding with litigation. The Committee provided comments on the draft Directions with comments on the *vires* of the Scheme, the introduction of mediation, and potential cost sanctions. Discussions will continue with the Judiciary in 2007.

#### (c) Lands Tribunal Ordinance and Hong Kong Court of Final Appeal Ordinance

The Committee wrote to the Department of Justice seeking the Department’s views on whether amendment could be made to introduce a leapfrogging procedure for complex cases from the Lands Tribunal to the Court of Final Appeal. The Department of Justice indicated it will investigate and the Committee anticipates it will receive a response in 2007.

### Fees for Transcript and Record of Proceedings

Members reviewed a Consultation Paper prepared by the Judiciary on the setting and administering of fees for transcripts and record of proceedings; this paper was also considered by the Criminal Law and Procedure Committee and joint submissions were sent to the Judiciary. It is anticipated fees will be reduced in early 2007.

### Enforcement of Court Judgment in Civil Cases

The Committee was invited to send comments to the AJLS on the *“Enforcement of Court Judgments in Civil Cases”*, particularly of Labour Tribunal and maintenance orders.

The Committee issued a circular and sought feedback from members to be consolidated with comments from the Family Law Committee to be sent to the AJLS in early 2007.

**Foreign Judgment (Reciprocal) Enforcement Ordinance**

The Committee wrote to the DOJ seeking an update on its effort to clarify arrangements for reciprocal enforcement of foreign judgments, particularly with England and Wales. The DOJ reported on the agreement between Hong Kong and the Supreme People's Court whereby certain commercial judgments made in specified Mainland courts and in Hong Kong could be mutually recognised and enforced.

However, in relation to specific jurisdictions such as England and Wales, DOJ referred to a recent opinion by the European Court of Justice which suggested only the European Community has competence to enter into international agreements on jurisdiction and enforcement of judgments with non-member jurisdictions. It therefore appears reciprocal enforcement of judgments with some foreign states, will be on a multi-lateral rather than a bi-lateral basis.

**Members of the Committee:**

Nicholas D. HUNSWORTH (*Chairman*)  
 Edward A. ALDER (resigned in April)  
 Mary S.H. CHAN  
 A. Clinton D. EVANS  
 Johnny C.M. FEE  
 D. Nigel FRANCIS  
 Denis G. BROCK (resigned in April)  
 Junius K.Y. HO  
 Joseph S.M. KWAN  
 Jeffrey H. LANE  
 Brenda F. LEE  
 Philip W.I. LI  
 Mark LIN  
 Amirali B. NASIR  
 Simon D. POWELL  
 Kenneth W.Y. WONG  
 Sherman C.N. YAN

Secretary: Director of Practitioners Affairs

**COMPANY AND FINANCIAL LAW COMMITTEE**

The Committee has reviewed and made comments on the following:-

- *Exposure Paper: Abolition of Requirement for main board issuers to publish paid announcements in newspapers and related matters*
- *Treatment of Structured Products under the Deposit Protection Scheme*
- *Consultation on Draft Banking (Capital) Rules*
- *Consultation on Draft Banking (Disclosure) Rules*
- *Companies (Revision of Accounts and Reports) Regulation*

**Members of the Committee:**

Patrick C.K. WONG (*Chairman*)  
 Grace K.W. CHAN  
 CHAO Tien Yo  
 Simon S.C. LAI  
 Angelina P.L. LEE  
 Lewis T. LUK  
 NG Kay Ian  
 David P.R. STANNARD  
 Richard J. THORNHILL

Secretary: Director of Practitioners Affairs

**CONSTITUTIONAL AFFAIRS COMMITTEE**

The Committee met on five occasions and the agenda was dominated by discussion of the *Interception of Communication and Covert Surveillance Bill*.

The Committee had conducted a thorough review of the issues arising from the difficulty the Administration faced in three judgments concerning the application of Article 30 of Basic Law: *HKSAR v. Lim Mak Tak and Others*, and *Criminal Cases 689 of 2004 and 687 of 2004* in which covert surveillance by domestic law enforcement agencies had been severely criticized, as well as the Chief Executive's Order issued by the Chief Executive on 10 August 2005. The Administration indicated it would introduce legislation to deal with this criticism and the breach of the Basic Law.



# Standing Committee on Practitioners Affairs

The Committee reviewed draft legislation circulated by the Security Bureau on the 2 and 16 February and dealt with 18 questions raised by the Panel on Security dated 7 February. The Committee prepared an initial response and indicated additional comments would be provided after an in-depth review of the draft legislation. The *Interception of Communication and Covert Surveillance Bill* was gazetted on 3 March. The Committee reviewed the initial responses by the Bar Association and the Privacy Commissioner. The Committee noted the Law Reform Commission Report on “*Privacy: the Regulation of Covert Surveillance*” published in April. As the amount of work was significant a decision was made to re-convene the Working Party on Covert Surveillance comprised of members of this Committee and the Criminal Law and Procedure Committee.

## **Race Discrimination Bill**

The Bill was gazetted on 1 December and a preliminary review was conducted of the proposals in December. It is anticipated significant submissions will be made in early 2007.

## **Human Rights Forum meetings**

A representative attended the meetings held on 31 March, 10 July and 6 December when the main topic on the agenda was the scope of the *Race Discrimination Bill*.

## **Members of the Committee:**

WONG Kwai Huen (*Chairman*)

BUT Sun Wai

Charles C.C. CHAU

Eric T.M. CHEUNG

John J. CLANCEY

William S. CLARKE

Mark D. DALY

Lester G. HUANG

IP Shing Hing

Ambrose S.K. LAM

Stephen S.Y. LAW

Joseph C.W. LI

LING Bing

POON Kai Cho

Kevin K.F. YAM

Secretary: Director of Practitioners Affairs

## **CRIMINAL LAW & PROCEDURE COMMITTEE**

The Committee held regular monthly meetings to review proposed legislation and areas of concern to criminal law practitioners. Members also participated in small group discussions on specific topics and served on various internal Sub-committees and Working Parties. Three members resigned during the year and the Committee elected a new Chairman in July. Major issues considered were:-

### ***Consultation Paper on Hearsay in Criminal Proceedings***

The Committee discussed the proposals by the Law Reform Commission's Sub-committee to reform the law of hearsay in criminal proceedings. As complex issues were involved and the proposals could have far-reaching effects on the criminal legal system, the Committee spent a significant amount of time to consider the proposed Core Scheme during four regular Committee meetings in addition to extra meetings. Views were obtained from overseas Law Societies on comparable reforms in their jurisdictions. Members recognized the hearsay rule has shortcomings but did not agree to the fundamental changes proposed under the Core Scheme. The Committee recommended retention of the exclusionary hearsay rule but with the exceptions to the rule being consolidated to achieve greater clarity.

### ***Consultation Paper on “Wasted Costs in Criminal Cases”***

The Committee considered the Administration's proposal to amend the definition of “wasted costs” in Section 2 of the *Costs in Criminal Cases Ordinance* (Cap. 492) (“CCCO”) to expand the court's jurisdiction to award wasted costs. Members were unconvinced there was any significant problem.

### ***Complex Fraud Trials***

The Law Society of England and Wales (“LSEW”) advised that lengthy complex fraud trials have led to a proposal in the England and Wales for such cases to be tried before a single judge without a jury and queried the experience in Hong Kong. Members observed that jurors in Hong Kong are subject to minimum qualification requirements and are generally of a high quality, and did not see the need to

dispense with jury trial in Hong Kong. Views were expressed to the LSEW that the England and Wales proposal represented a fundamental departure from the accepted right of a person to a trial by jury and should be resisted as it could open the door for other serious and complicated cases to be tried in future by a judge alone.

### **Duty Lawyer Service (“DLS”)**

Council noted the Committee’s concerns over the case assignment policy of the DLS, which has been assigning more than one “*not guilty plea*” case per day to a duty lawyer. This policy is based on the assumption there will be a last-minute change of plea from a “*not guilty plea*” to a “*guilty plea*”. However, when this assumption fails to materialise, duty lawyers can only conduct one case, so the other cases have to be adjourned or re-fixed, or the DLS has to instruct other duty lawyers to take these up at very short notice. The Committee considered this situation to be unsatisfactory. Council agreed that members should not be compromising their professional standards and requested the DLS to consider revising its assignment policy.

### **Fees for Transcript and Record of Proceedings**

The Committee reviewed the Consultation Paper on “*Fees for Transcript and Record of Proceedings*” which responded to the concerns raised at the higher level of fees. Joint submissions with the Civil Litigation Committee were sent to the Judiciary in November.

### ***Interception of Communications and Surveillance Bill***

Committee members reviewed and submitted their views on the draft legislation proposed by the Administration in February on covert surveillance. *The Interception of Communications and Surveillance Bill* was subsequently gazetted in March to provide a new legal basis for interception of communications and covert surveillance operations by the law enforcement bodies, and to plug the lacuna left unfilled by the *Law Enforcement (Covert Surveillance Procedures) Order* issued by the Chief Executive in July 2005. The Joint Working Party with the Constitutional Affairs Committee was reconvened to review the *Bill*, the views of stakeholders including the Bar Association and

the Privacy Commissioner for Personal Data, and the LRC report on “*Privacy: the regulation of covert surveillance*”. Council made two separate submissions to the Bills Committee on “*Legal Professional Privilege*” and “*Other Aspects of the Bill*” and also submitted comments on the Committee Stage Amendments.

### **Judicial Work Shadowing Scheme**

The Committee noted the Judicial Work Shadowing Scheme in the England and Wales provides an opportunity for solicitors interested in seeking future judicial appointments to have some insight into the work of the Judiciary, both in and out of court. It recommended the Standing Committee on Practitioners Affairs consider proposing a similar scheme to the Judiciary.

### **Legal Visits - Trainee Solicitors**

A question was raised on the policy in relation to the conduct of legal visits by trainee solicitors upon completion of their Trainee Solicitor Contracts (“TSC”) but before being admitted as a solicitor. The Committee noted trainee solicitors become paralegals during this interim period and should apply to be on the Authorized Solicitors’ Clerks List in order to conduct legal visits. It recommended the Compliance Department to revise the circular on “*Legal Visits*” to include a reminder to trainee solicitors to make such an application well in advance of the expiry of the TSC.

### **Provisions of Written Judgments, decisions, verdicts and reasons for sentence**

The Committee sought confirmation from the Judiciary Administrator and issued a circular to clarify the Judiciary’s policy on the free provision of written judgments to the parties to assist in the preparation of appeals.

### **Release of Bailed Person from Custody**

The Committee complained to the Criminal Court Users’ Committee on the length of time taken to release a bailed person from custody, by providing examples of relevant cases. The Judiciary confirmed directions would be issued reminding judge’s clerks to speed up the release process.

# Standing Committee on Practitioners Affairs

## Review of Criminal Legal Aid Fees System

A Sub-group was convened to discuss the details of the appropriate remuneration for solicitors taking up criminal legal aid assignments. Only after repeated requests did the Administration convene a Joint Working Group ("JWG") in March to review the system. Two Committee members served on the JWG, on which the Bar Association, the Judiciary, the Legal Aid Department, the Legal Aid Services Council were also represented. It met on six occasions. The JWG recognized there were substantial problems with the existing system and discussion concentrated on the appropriate mechanism to replace it. The Committee reviewed various options including the Marked Brief System proposed by the Bar, the DOJ's briefing-out system and the Administration's initial and revised proposed framework of the new fee system. A review of the position in overseas jurisdiction, e.g. the England and Wales and Australia also took place and a circular was issued to canvass members' views as well as updating them with progress reports. The Committee made four submissions to the Administration and discussions will continue.

The Committee also reviewed the following:

- Consultation Paper by the International Criminal Court on the draft standard application forms for appointment as professional investigators and assistants to counsel
- Areas of criminal practice to be covered in a sample retainer letter
- Practice Direction 10.3 on "*Citation of Judgments written in Chinese at hearings conducted in English*"
- Draft *Live Television Link (Witnesses Outside Hong Kong) Rules* and draft *Rules of the High Court (Amendments) Rules*
- Consultation Paper on Solicitors' Rights of Audience issued by the Chief Justice's Working Party

## Members of the Committee:

Stephen W.S. HUNG (*Chairman since July*)  
Melville T.C. BOASE (resigned in March 2006)  
BUT Sun Wai  
Bucky K.H. CHAN  
Duncan K.C. FUNG  
Herman H.M. HUI  
Christopher KNIGHT (resigned in December)  
Andrew P.C. LAM (resigned in October)  
Paul M.W. LI  
Philip W.I. LI  
Andrew POWNER  
Kevin STEEL  
Anthony UPHAM  
Michael VIDLER

Secretary: Assistant Director, Practitioners Affairs

## External Committees:

### CRIMINAL COURT USERS' COMMITTEE ("CCUC")

The CCUC met in April and October to discuss matters of concern to users of the criminal courts. Issues discussed included the use of electronic bundles for criminal proceedings in the High Court; delay in releasing bailed persons from custody, translation of court decisions, the Practice Direction on Stay Applications.

### LIAISON COMMITTEE WITH THE CORRECTIONAL SERVICES DEPARTMENT ("CSD")

The Liaison Committee met twice and considered: provision of pre-sentencing assessment reports to the court; legal visit booking system in CSD institutions; extension of video legal visit facility to other CSD institutions; conduct of legal visits by foreign lawyers; use of electronic equipment during legal visits. Committee members visited Stanley Prison and Lai Chi Kok Reception Centre in February and October.



**Members of the Liaison Committee:**

Bucky K.H. CHAN  
 Duncan K.C. FUNG  
 Paul M.W. LI  
 Anthony UPHAM

Secretary: Assistant Director, Practitioners Affairs

**FAMILY LAW COMMITTEE**

The Family Law Committee met formally on eight occasions and attended a meeting with the Family Court Judges. The Committee co-opted two new members and one member retired.

**Domestic Violence Ordinance (“DVO”)**

After the publication of the *“Report on Domestic Violence Ordinance”* dated December 2005, the Committee continued to monitor the Administration’s proposals to amend the DVO including attendance at a meeting of the Panel on Social Welfare on 28 March when the preliminary legislative proposals prepared by the Health Welfare and Food Bureau (“HWFB”), were reviewed. The Committee met with representatives of HWFB on 5 June and conducted an in depth review of these proposals and expressed disappointment on the narrow outlook by the Administration; submissions on the preliminary proposals were sent to LegCo in June. The Committee’s recommendations to recruit volunteers to provide pro bono assistance to victims of domestic violence was endorsed by Council and a circular was issued in May, resulting in 50 plus members volunteering their services.

**District Court (Fixed Costs in Matrimonial Causes) Rules**

The Committee continued its consultation with the Director of Legal Aid on a proposal to reduce fees. The Council noted the views of the Committee and indicated it was inappropriate to reduce the fee levels as these were too low in relation to ancillary relief and custody matters, and failed to accommodate the new procedures introduced by the *Judiciary’s Pilot Scheme on Financial Dispute Resolution (“FDR”)*. Council indicated it would be appropriate to review

the fees at the completion of the Pilot Scheme when appropriate legislative amendments could be introduced.

**Pension Splitting**

The Committee had written to the DOJ on the lack of a comprehensive policy in relation to pension splitting in 2005; the Department subsequently passed this matter to HWFB. After an initial enquiry, HWFB indicated it is conducting a review across all Bureaux and the matter will take time. The Committee wrote again in September asking for a progress report but the situation remains unsatisfactory as there is no indication when the consultation exercise will be finalised.

**Attachment of Incomes Order**

In relation to attachment of incomes the DOJ has confirmed it will introduced the *Attachment of Incomes Order (Application to Government and Miscellaneous Amendment) Bill* in 2007 to clarify the *Attachment of Incomes Ordinance* will apply to civil servants thus closing a significant loop-hole.

**Family Court**

The Committee wrote to the Chief Justice in April to raise concerns on matters previously discussed in 1998 and on the Family Court generally. A “brainstorming session” was in held in June and after corresponding with Hartmann J. the Committee met with representatives of the Judiciary on 20 September. The following items of concern were discussed:-

part heard cases, listing of cases, FDR hearings, complement of family judges, and the lengthy wait for decree nisi hearings.

Hartmann J. acknowledged the concerns and indicated the Judiciary will be reviewing the matters raised. In the meantime, the Judiciary had established a Family Court Users’ Committee under the chair of HHJ B. Chu where matters of concern can be canvassed. The Chief Justice appointed two members of the Family Law Committee to sit on the Committee in their personal capacity.

# Standing Committee on Practitioners Affairs

## Meeting with Margaret Ng

Members met with Margaret Ng in July and discussed concerns on the DVO, pensions, the failure by HWFB to implement the recommendations in the LRC's Reports on: "*Guardianship of Children*", and "*Child Custody and Access*", as well as the unsatisfactory administrative procedures in Care and Protection Orders.

The Committee made submissions on:-

- FDR in April
- Child Protection to the Panel on Welfare Services in June
- Code of Practice on Reproductive Technology & Embryo Research in September

## Members of the Committee:

Helen Y.H. KONG (*Chairman*)

Mary S.H. CHAN

Dennis C.K. HO

Anthony J. HUNG

Barbara A. HUNG

LAM Tze Yan

LEUNG Shek Lim

Catherine K.G. POR

Bart RWEZAURA (resigned in December).

Sharon A. SER

Susan WONG

Secretary: Director of Practitioners Affairs

## INSOLVENCY LAW COMMITTEE

The Committee met formally on 23 March and conducted its business via e-mail for the remainder of the year, and a new Chairman was elected and a new member was co-opted in March.

## Official Receiver's Office ("ORO") - Panel A Scheme

The Committee raised with ORO the possibility of appointing suitably qualified solicitors to the Panel A Scheme which had been established to contract out non-summary court winding-up cases in 1996 in consultation with then Hong Kong Society of Accountants. After deliberation, ORO decided only accountancy firms would be considered for the Panel A Scheme. ORO advised the Society's representative only 12 firms had been assigned to the Scheme but during the year there were only six assignments and these cases required more accountancy skills than legal ones. ORO indicated it has no plan to expand appointment of solicitors to Panel A.

## ORO Services Advisory Committee ("OROSAC")

The Chairman of the Committee was appointed as a member of the OROSAC in December.

## Remuneration of Liquidators

The Committee closely followed the litigation involving the interpretation of Rule 146(2) of the Companies *Winding-Up Rules* on remuneration of liquidators. The Official Receiver ("OR") had indicated ORO's view that such remuneration should be on a time costs basis and not a percentage basis. The matter was finally decided in July with the decision of Kwan J. in *Golden Glory Restaurant and Others*, the remuneration of liquidators should be on a time costs basis.

## Insolvency Interest Group

The Committee agreed it would liaise with the Insolvency Interest Group on matters of taxation and other common matters involving insolvency issues.

## Legislation

The Committee sought the views of the LRC on whether there would be any consolidation of existing legislation on insolvency-related matters. The LRC noted a series of reports on insolvency had been published in the 1990s on bankruptcy, corporate rescue, insolvent trading, and the

winding-up provisions of the *Companies Ordinance*. Unfortunately, the Commission has no plans to consider insolvency again and it appears any reform rests with the Standing Committee on Company Law Reform. The OR indicated the insolvency provisions contained in the *Companies Ordinance* will be considered in *Phase II of the Company Law Rewrite*, which is expected to be completed by 2010; there are no plans to consolidate the corporate and personal insolvency provisions into a single piece of legislation.

### Individual Voluntary Arrangements (“IVA”)

The Registrar wrote to The Law Society complaining about the failure by some members engaged in insolvency work to observe the requirements on Rule 122Z. A circular was issued in April to remind members of this requirement.

### Members of the Committee:

Keith M.K. HO (*Chairman*)

Victor K.S. CHIU

Ian R. DE WITT

Nicholas D. HUNSWORTH

Camille JOJO

Jimmie K.S. WONG

Secretary: Director of Practitioners Affairs

## INSURANCE LAW COMMITTEE

The Insurance Law Committee met in May and July. The Committee has been formed to review general insurance related issues. Its primary concern this year was to explore the merits of establishing a Central Employees Compensation Insurance Scheme (“CECIS”) as operated in a number of other countries or whether instead to recommend adoption of the Hong Kong Federation of Insurers (“HKFI”) alternative suggestion of putting in place a Residual Market Mechanism (“RMM”).

The suggestion to establish CECIS has arisen due to difficulties of some employers finding insurance coverage for high risk employees. A CECIS was suggested as a way of resolving this difficulty.

Members reviewed material on CECIS-type schemes operating in other jurisdictions in particular Australia. For CECIS to be commercially viable other jurisdictions have introduced legislation whereby injured workers have to make an election for employees’ compensation or common law damages with common law damages claims frequently limited to only more serious cases. It was felt the introduction of a CECIS would lead to similar changes to the law in Hong Kong and would thus effectively limit entitlement damages. These schemes also produce administrative problems such as long delays, inconsistent approach to the use of arbitration and conciliations, procedural difficulties and lack of expertise. The Committee therefore felt that introduction of a CECIS in Hong Kong would not be beneficial to either employers or employees.

The alternative proposal put forward by the HKFI was to establish a RMM, a scheme which is similar to that operated by the MIB to which insurers would contribute according to their market share of the employees’ compensation pool.

This Fund is to provide insurance to all employers who cannot gain cover from the market after contacting 3 insurers or brokers for employee compensation insurance. The Committee felt the existing problems in obtaining employees compensation insurance in high risk areas would be better solved by putting in place the RMM as suggested by the HKFI. The Committee accordingly drew up submissions to the Labour Department outlining its objections to the creation of a CECIS in Hong Kong and recommending adoption of a RMM, which has now been established.

Members of the Committee also met with the representatives of HKFI in July and discussed the RMS and the CECIS. The issue of recovery agents was considered and both the Committee and HKFI expressed interest in cooperating to tackle this problem.

# Standing Committee on Practitioners Affairs

## Members of the Committee:

Mark F. REEVES  
Steven J. DEWHURST  
Raymond C.K. HO (resigned in May)  
Christine M. KOO  
Wendy Y.W. LEE  
Martin LISTER (resigned in May)  
Nicholas J.E. LONGLEY  
MAK Hon Ming  
Lewis S.C. MAN  
Christopher A. POTTS  
Rupert C. SKRINE  
TSUI Kwok Sum  
WONG Kwok Yan  
Angela S.Y. YIM

Secretary: Director of Practitioners Affairs

## INTELLECTUAL PROPERTY COMMITTEE

The Committee met formally on three occasions in March, April and September and also attended external meetings with the Government, the Intellectual Property Department ("IPD") and attended Bills Committee meetings at LegCo.

### Bi-annual meetings with IPD

Members attended two meetings in March and September when the following issues were discussed:-

- Costs in Trade Marks Registry Proceedings
- Level of fees awarded by the Trade Marks Registry
- Rules of High Court (Amendment) Rules:
- Company Registration  
The Companies Registry whilst sympathetic to the difficulties encountered in relation to the registration of some famous trademarks as company names without the authorization of the trademark owners indicated it planned merely to produce a White Bill for public consultation in mid 2009 and to introduce a final bill in LegCo in 2010.

- IPD advised on current discussions with the Trade Mark Office under the State Administration for Industry and Commerce on the setting up of Trademark Agencies in the Mainland under CEPA by Hong Kong IP practitioners.
- Problems of late response from IPD examiners when deficiency objections raised.
- Register of TM Agency: Discussion on establishing a register in Hong Kong.
- Use of Internet by Examiners and Hearing Officers  
The Law Society complained the Registry had raised bad faith objections to certain trademark applications on the basis of internet searches on Mainland and overseas websites. IPD agreed to revise the section under "Examining Applications on Consent" and "Registering Applications on Consent" in the Registry's Work Manual's chapter on "Consent".

### Copyright (Amendment) Bill 2006

The Committee reviewed the Amendment Bill and submissions were sent to the Bills Committee; a member attended a Bills Committee meeting on 8 May. Representatives also held discussions with the Commerce, Industry and Technology Bureau on 15 May and 28 November. It is anticipated there will be further discussion of the provisions in early 2007 with passage of the Bill thereafter.

The Committee sent representatives to the following:

- **Forum about Copyright: "How to maintain a balance between the spread of information and the protection of copyright"**
- **APEC IPR Public Education Platform**

### Anti-Competition Law

The Committee nominated a member to sit on the Law Society's Working Party on Competition Law.

### **Protocol amending the TRIPS agreement and amendments to the *Patents Ordinance***

IPD consulted the Committee and sought its views on the protocol amending the TRIPS agreement and proposed amendments to the *Patents Ordinance* in November and December.

#### **Members of the Committee:**

A. Clinton D. EVANS (*Chairman*)  
 Ella S.K. CHEONG  
 Lindsay B. ESLER  
 KWONG Chi Keung  
 Anita P.F. LEUNG  
 Rebecca M.C. LO  
 Henry J.H. WHEARE  
 Kenny K.S. WONG

Secretary: Director of Practitioners Affairs

## **MANAGEMENT & TECHNOLOGY COMMITTEE**

The Committee met five times during the year and covered the following matters:

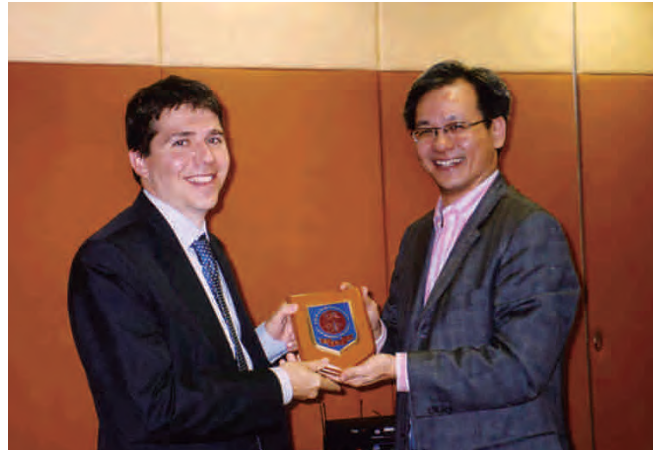
### **Digital Certificates**

The Committee noted the Judiciary's decision to delay the implementation of the proposed e-Filing of Draft Order System. The Committee made a recommendation which led to the Council's decision to discontinue issuing digital certificates to members due to low usage.

### **Forum on IT Knowledge and Support Applications for Solicitors' Practices**

At the request of the Chairman of the Standing Committee on Practitioners Affairs, the Committee considered organising a forum on IT knowledge and support applications. The first forum would focus on basic IT knowledge while the second will cover applications designed to support solicitors' practices. Both forums are scheduled to take place in early 2007.

### **Seminar on Electronic Disclosure and eDiscovery Solutions**



Due to the positive feedback of the Seminar on "eDiscovery Challenges" held in 2005, the Committee organised a similar seminar and expanded it into a half-day event which carried CPD points. The first speaker was Mr Norman Pang of Doctor A Security Systems (HK) Ltd. His presentation included computer forensic and e-evidence discovery. The second speaker was Mr Patrick Bourke of Norton Rose who covered legal issues in electronic disclosure in Hong Kong. Over 80 members attended the seminar held on 12 August.

#### **Members of the Committee:**

Andrew S.K. LAW (*Chairman*)  
 Barry C.Y. CHIN  
 Gabriela KENNEDY  
 Pamela F. KU  
 William W.S. LAM  
 Amirali B. NASIR  
 Kelvin K.Y. TAM  
 Peter K. TSE

Secretary: Assistant Director, Administration



# Standing Committee on Practitioners Affairs

## PROBATE COMMITTEE

The Probate Committee continued to attend to members' enquiries and identify and review issues and procedure with the aim of improving probate practice. The Committee also assisted in processing applications for publication in the Will Search Inquiry. It maintained close contact with the Probate Registry through the Joint Standing Committee on Probate Practice comprising the Registrar of the High Court, Probate Masters, Chief Probate Officer and members of the Committee.

### Anti-competition Law

The Committee reviewed a Report on the "*Review of Hong Kong's Competition Policy*" issued by the Competition Policy Review Committee. The Standing Committee on Practitioners Affairs convened a Working Party to consider The Law Society's response to the proposals on Hong Kong Competition Policy and the Committee was represented on the Working Party.

### Consultation Paper on "*Domicile Bill 2006*"

The Committee reviewed the draft *Domicile Bill* to implement the recommendations made by the LRC in its April 2005 report "*Rules for Determining Domicile*". Members welcome the Bill as it seeks to consolidate and reform the law for determining the domicile of individuals and make it easier for a person's "*domicile*" to be ascertained.

### Pamphlet on "*Why make a Will?*"

The Committee reviewed and updated The Law Society's pamphlet "*Why make a Will?*".

### Resource Centre for Unrepresented Litigants to Probate Applications

The Probate Registry provides assistance to unrepresented applicants. The Committee did not think there is a need to extend services to cover probate applications. The abolition of estate duty and publication of a new set of probate forms make the application process more user-friendly, not only for practitioners, but also for unrepresented applicants.

### Revenue (*Abolition of Estate Duty*) Ordinance

The *Revenue (Abolition of Estate Duty) Ordinance* was enacted in November 2005 and came into operation on 11 February. The legislation gives effect to the proposal to abolish estate duty and introduces fundamental changes to procedures for probate and administration. The Committee issued two circulars which made documents and forms on the new system available, and highlighted a thematic website hosted by the Home Affairs Bureau on the support services for estate beneficiaries. A further circular was issued to advise members that as the sworn value of the property will no longer be stated in the Schedule of Assets and Liabilities annexed to the Letter of Administration or the Grant of Probate, adjudication requests to the Stamp Office for Deeds of Family Arrangement will have to be supported by a copy of the Land Search Report of the subject property.

### Joint Standing Committee on Probate Practice

The Joint Standing Committee met once this year to monitor the operation of the new probate practice after the implementation of *Revenue (Abolition of Estate Duty) Ordinance* and the introduction of the new specified probate forms.

### Joint Working Group on Review of Probate Forms

The Joint Working Group, comprising the Probate Master, the Chief Probate Officer and two members of the Probate Committee, completed a review of the Probate Forms specified under Rule 2A of the *Non-Contentious Probate Rules* (Cap. 10A). These were updated and new forms were introduced to incorporate the changes introduced by the *Revenue (Abolition of Estate Duty) Ordinance 2005*. A circular was issued publicising the new specified forms with an Index and a Guide.

Members also considered the LRC Report on "*Substitute decision-making and advance directives in relation to medical treatment*".

**Members of the Committee:**Herbert H.K. TSOI (*Chairman*)

Helen Y.P. CHAN

Albert C.Y. HO

Anson K.C. KAN

Patricia LAM

Billy W.Y. MA

NG Kin Yuen

TAM Sau Hing

Secretary: Assistant Director of Practitioners Affairs

**PROPERTY COMMITTEE**

The Committee reviewed issues and legislative proposals relating to conveyancing practice. Besides the regular monthly meetings, the Committee met with representatives of Government departments, other organisations and attended LegCo meetings. Each member of the Committee continued to consider and determine, on a regular basis, applications for waivers of DMC Guidelines and applications under Rule 5C of the *Solicitors' Practice Rules*. Members also served on internal Working Parties, and as the Society's representatives on external Committees/Working Parties on property related issues. Two members resigned this year and the Committee co-opted three new members to cope with its heavy workload.

**Approval of Deed of Mutual Covenants ("DMCs") by the Legal Advisory and Conveyancing Office ("LACO") under the Consent Scheme**

At the repeated requests of the Committee, LACO considered in greater detail the concerns raised by the Committee on the procedure for approval of DMC applications under the Consent Scheme, and the request for performance pledges to be issued. LACO concluded that the process of approval made it inappropriate for an across-the-board performance pledge. However, the review exercise has resulted in LACO implementing a number of improved monitoring and problem resolution steps to expedite the approval process.

**Building Affairs Tribunal**

Committee members met with representatives of the Hong Kong Institute of Surveyors ("HKIS") to exchange views on

HKIS' proposal to establish a Building Affairs Tribunal ("BAT") to resolve building management and maintenance related disputes with the assistance of building professions in an efficient and economical manner. One of the proposals would prohibit legal representation in the BAT. Members did not agree with the proposal as management disputes inevitably involve points of law and it would be undesirable for binding court decisions to be made without input from legal representatives. Instead of establishing a new tribunal, the Committee recommended streamlining the judicial process in the Small Claims Tribunal and the Lands Tribunal.

***Building Management (Amendment) Bill 2005***

The Home Affairs Department consulted the Committee on its proposals to empower Owners' Corporations ("OC") to (1) borrow, on behalf of defaulting property owners, loans from the Government in order to comply with statutory repair orders; and (2) to execute and register a charge against the properties of the defaulting owners in favour of the Government to secure repayment of the loans. The Committee queried whether the costs and expenses incurred by the OC would form part of the loan and whether the Government would reimburse the OC in cases of future repayment of the loan by defaulting owners.

**Building Management & Maintenance - Public Consultation on Mandatory Building Inspection**

Members discussed the proposed mandatory building inspection scheme with the aim of providing a long-term approach to resolve problems caused by longstanding neglect of buildings. A Committee member attended a discussion forum held by the Housing, Planning and Lands Bureau. The scheme would require owners of private buildings of 30 years or more to engage qualified inspectors to inspect their buildings on a regular basis and undertake the necessary repair works specified by the inspectors. The Committee reserved its comments as the proposals covered social rather than legal issues.

**Conveyancing Fees**

The Committee reviewed a set of recommended voluntary conveyancing fee guidelines prepared by the Working Party on Voluntary Conveyancing Fees and submitted a report to the Standing Committee on Practitioners Affairs on

# Standing Committee on Practitioners Affairs

whether the Society should issue an updated schedule. The Standing Committee noted it would be more appropriate to approach the Costs Committee to revise the statutory conveyancing fee scales and convened a Joint Working Party which met in November.

## **Guidelines for the Drafting of Deeds of Mutual Covenant**

The Committee sought clarification from LACO on issues such as: the meaning of “unit” in the new Guidelines; whether the requirements in new Guideline 36 only relate to the common areas and facilities of the development.

## **Hong Kong Association of Banks - Five-day Clearing Week**

In view of the adoption of the five-day clearing week policy by the banking industry, the Committee issued a circular in July advising members to encourage their clients to avoid completion on Saturdays. The Estate Agents Authority was invited to adopt a similar policy. Members also considered amendments to the Non-Consent Scheme to reflect the new policy, and following Council’s endorsement, sought the approval of the Chief Justice on the proposed amendments.

**Land Titles (Amendment) Bill - second Working Draft**  
Committee members attended a briefing by the Administration in June on the second working draft of the *Land Titles (Amendment) Bill*. The Committee reviewed the proposed amendments, and submissions were sent to the Administration in November and December.

## **Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) - Proposal to Lower Compulsory Sale Threshold for Specified Classes of Lots**

The Administration proposed to lower the compulsory sale threshold under Section 3(1) of the *Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545)* in three specified classes of cases so that owners of “80%” instead of “90%” of undivided shares in a lot would be entitled to apply to the Lands Tribunal for a compulsory sale of the whole lot for the purpose of redevelopment. The Committee supported the idea in principle but queried the appropriateness of the three chosen classes. Members considered the condition

rather than the age of the building to be a more relevant factor. It also recommended the legislation should specify the criteria for such applications.

## **Practice Direction on Employed Solicitors**

The Committee reviewed the draft Practice Direction proposed by the Working Party on Employed Solicitors’ Code. Submissions were made, inter alia, that employed solicitors should not act as stakeholders or give professional undertakings in conveyancing transactions.

## **Proposed Amendment to the Conveyancing and Property Ordinance (Cap. 219) (“CPO”) - Production of Original Pre-intermediate root Title Documents**

The Committee strenuously pursued its request to the DOJ to expedite the legislative process to resolve the difficulties created by two judgments, namely *Yiu Ping Fong v. Lam Lai Hing* HCMP No. 3617 of 1998 and *Guang Zhou Real Estate Development (Hong Kong) Co. Ltd. & Anor v. Summit Elegance Limited* HCA 1531 of 1998. Draft legislative amendments, settled by a Senior Counsel, were provided to the DOJ, which issued a public Consultation Paper in April. The Committee issued a circular to invite members’ comments. A meeting was held with the Bar Association to discuss its concerns; and a Senior Counsel was engaged to redraft the legislative amendments.

## **Standard Sale and Purchase Agreement**

The Committee reviewed the seventh draft standard form of Sale and Purchase Agreement (“SPA”) prepared by the Working Party on Standard Conveyancing Forms. Members had expressed reservations on the proposed policy to publish such forms as the Working Party could not reach consensus on several controversial clauses; it was also noted The Law Society could not mandate adoption of the form by the profession. A recommendation was made to the Standing Committee on Practitioners Affairs that instead of publishing a standard SPA form, The Law Society should consider lobbying the Government to update the standard covenants and conditions contained in the Schedules to the *Conveyancing and Property Ordinance (Cap. 219)*.

### **Solicitors' Accounts Rules and Banking Practice**

The Committee followed up with the Hong Kong Association of Banks ("HKAB") on concerns over late crediting of mortgage loan funds into their clients' accounts for completions. The HKAB indicated its view that the problem was due to late drawdown instructions from solicitors' firms; members noted the HKAB is not in a position to mandate a unified practice.

The Committee also considered:

- the *Property Yearbook* published by The Law Society of England and Wales
- draft Practice Direction on Pilot Scheme for Building Management Cases in the Lands Tribunal
- candidates to be the new Chief Examiner of the Overseas Lawyers Qualification Examination
- articles on conveyancing topics for inclusion in *The Law Society Centenary Book*
- updated bilingual conveyancing forms prepared by the Bilingualism Committee

### **External Committees:**

The Committee was represented on the following external groups and committees:

- **Land Registry Customer Liaison Group**
- **Land Registry Joint Standing Committee**
- **The Land Titles Ordinance Steering Committee**
- **The Land Titles Ordinance Review Committee**
- **The Title Registration Education Committee**

### **Members of the Committee:**

Emily Y.M. LAM (*Chairman*)  
 Lilian CHIANG  
 CHAU Wang Wai  
 Wendy CHOW  
 Tammy K.F. GOH (resigned in August)  
 Peter H.K. HUNG (resigned in January)  
 Ambrose LAM  
 Patrick K.H. LAM  
 Angela W.Y. LEE  
 Mabel M.B. LEE  
 Vincent W.S. LIANG  
 Amanda L.Y. LIU  
 Billy W.Y. MA  
 MA Ho Fai  
 David P.H. WONG  
 Terry P.L. YEUNG

Secretary: Assistant Director, Practitioners Affairs

## **WORKING PARTY ON LAND TITLES ORDINANCE**

Members attended a briefing by the Administration on the second working draft of the *Land Titles (Amendment) Bill 2006* in June and held five meetings in July and August to discuss the proposed amendments to the *Land Titles Ordinance*. It submitted a report to the Property Committee and subsequently two sets of submissions were made to the Administration in November and December.

### **Members of the Working Party:**

Peter P. AHERNE (*Chairman*)  
 Wendy CHOW (resigned in July)  
 E. John DAVISON  
 Emily LAM  
 Alice LEE  
 LEUNG Siu Hon  
 Andy O.T. NGAN

# Standing Committee on Practitioners Affairs

Vincent W.S. LIANG  
Patrick J. SHEEHAN  
Judith SIHOMBING  
Paul K.H. YU

Secretary: Assistant Director, Practitioners Affairs

## WORKING PARTY ON REVISED DMC GUIDELINES

The Working Party reconvened in May to consider revisions to The Law Society's DMC Guidelines given LACO's revision of its DMC Guidelines. It met on five occasions during the latter half of the year and sought the views of the Property Committee on the policy to adopt in relation to certain guidelines. It also considered the changes in policy regarding waivers to be granted in relation to compliance with the Guidelines.

### Members of the Working Party:

LEUNG Siu Hon (*Chairman*)  
Patrick K.H. LAM  
MA Ho Fai  
David P.H. WONG

## WORKING PARTY ON VOLUNTARY CONVEYANCING FEE GUIDELINES

The Working Party reconvened to recommend a set of conveyancing fees for adoption by the Property Committee. Members made references to the fee scales published by other professional bodies in the real estate industry, the recommended fee guidelines issued by The Law Society of Singapore, local conveyancing practice, statutory conveyancing scales, current market conditions, and drew up a set of recommended fees for consideration.

### Members of the Working Party:

Wendy CHOW (*Chairman*)  
Tammy K.F. GOH (resigned in August)

Vincent W.S. LIANG  
MA Ho Fai  
David P.H. WONG

Secretary: Assistant Director, Practitioners Affairs

## REVENUE LAW COMMITTEE

The Committee met on two occasions in March and July. The Committee reviewed the following:

- *Revenue Bill 2006*
- *Betting Duty (Amendment) Bill 2006*
- *Exemption of Offshore Funds Bill*
- Draft Departmental Interpretation and Practice Note#10
- *Consultation Paper on Tax Reform and GST*

### Joint Liaison Committee on Taxation

Representatives attended meetings on a monthly basis and discussion took place on reform of its constitution.

### STEP

The Committee reviewed STEP's proposals to amend the *Trustee Ordinance* and to raise Hong Kong's profile as a centre for financial services, and attended a Forum organised by STEP on 28 February.

### Members of the Committee:

William A. THOMSON (*Chairman*)  
James J. BERTRAM  
Eric C.H. CHIU  
Philson W.H. HO  
Vincent P.C. KWAN  
Simon J.G. RAE  
Anthony C.K. SO

Secretary: Director of Practitioners Affairs



## SECURITIES LAW COMMITTEE

The Committee has reviewed and made comments on the following:-

- *Exposure Paper: Abolition of requirement for main board issuers to publish paid announcements in newspapers and related matters*
- *Discussion Paper on the Growth Enterprise Market*
- *Consultation on Draft Banking (Capital) Rules*
- *Consultation on Draft Banking (Disclosure) Rules*

### Members of the Committee:

Simon H. BERRY (*Chairman*)  
 James W. BAIRD  
 Julia F. CHARLTON  
 Leo P.Y. CHIU  
 Julianne P. DOE  
 Teresa Y.Y. KO  
 Vincent P.C. KWAN  
 Angelina P.L. LEE  
 Timothy LOH  
 Gavin P. NESBITT  
 Patricia J. SHIH  
 Dominic W.L. TSUN  
 David P.R. STANNARD  
 Dieter L.T. YIH

Secretary: Director of Practitioners Affairs

## RETIREMENT SCHEMES COMMITTEE

The Committee has reviewed and made comments on the following:-

- *New and Revised Proposed Amendments to the Occupational Retirement Schemes Ordinance (Cap.426)*
- *Consultation Paper on Proposals to Improve the Content of Annual Benefit Statement*
- *Revised Guidelines*

### Members of the Committee:

Duncan A.W. ABATE (*Chairman*)  
 David G. ADAMS  
 Nancy CHAN (resigned in February)  
 Cynthia W.S. CHUNG  
 Angus H. FORSYTH  
 Rory C. GALLAHER (resigned in July)  
 Christine M. KOO  
 Martin C.V.M. LISTER (resigned in February)  
 Fergus F.C. LU  
 Judy YANG

Secretary: Director of Practitioners Affairs

## WORKING PARTY ON COMPETITION LAW

The Working Party was convened in October in anticipation of the Administration's *Consultation on Introducing a Competition Law into Hong Kong*. The following Committees were invited to nominate a member to sit on the Working Party:-

Probate,  
 Civil Litigation, and  
 Intellectual Property

The remaining members were drawn from the Standing Committee on Practitioners Affairs and Council.

Members reviewed the *Report on the Review of Hong Kong's Competition Policy* issued by the Competition Policy Review Committee dated June and the public Discussion Document "*Promoting Competition - Maintaining our Economic Drive*". The Working Party prepared answers to the *20 Key Questions* and subject to Council's approval these will be sent to the Economic Development and Labour Bureau.

# Standing Committee on Practitioners Affairs

## Members of the Working Party:

Simon H. BERRY (*Chairman*)  
Lester G. HUANG  
NG Kin Yuen  
Simon D. POWELL  
Thomas S.T. SO  
Henry J.H. WHEARE  
Kevin K.F. YAM

Secretary: Director of Practitioners Affairs

## WORKING PARTY ON HIGHER RIGHTS OF AUDIENCE

The Working Party met three times in July, August and September.

On 7 June the Chief Justice's Working Party on HRA published its Consultation Paper after two years' deliberation; its terms of reference were: *"to consider whether solicitors' existing rights of audience should be extended and, if so, the mechanism for dealing with the grant of extended rights of audience to solicitors"*.

The initial deadline for comment was 31 August but as the consultation period covered the summer months an extension was sought to enable The Law Society's comments to be submitted on 30 September. A circular was issued on 17 July publicising the Consultation Paper and seeking members' views.

In August, the Society organised a lobbying campaign seeking support from all legal firms, solicitors, and commercial organisations, which included the circulation of postcards in support of the campaign. The Society was pleased to note there was overwhelming support for the extension of HRA to solicitors from clients and court users as well as the profession. The Working Party's submissions, approved by Council, were sent to the Chief Justice's Working Party on 29 September, which is considering responses to the consultation exercise.

## Members of the Working Party:

Andrew JEFFRIES (*Chairman*)  
Peter H.C. BARNES  
Melville T.C. BOASE  
Christopher P. ERVING  
Stephen W.S. HUNG  
Nicholas D. HUNSWORTH  
Mark LIN  
J.C. Nicholas MILLAR  
Christopher N. MORLEY  
Amirali B. NASIR  
Mark F. REEVES  
Sharon A. SER  
Sylvia W.Y. SIU  
Felix K.Y. YAU

Secretary: Director of Practitioners Affairs

## WORKING PARTY ON COVERT SURVEILLANCE

The Working Party met on nine occasions between 19 April and 14 July as the pressure to provide submissions was intense given the significance of the legislation and the deadline to pass the same by the end of the LegCo session in mid July.

The Working Party focused on the failure of the *Bill* to adequately protect legal professional privilege ("LPP") and submissions were sent to the Bills Committee on LPP on 12 May and members were advised of this by a circular dated 15 May.

Additional submissions in relation to other aspects of the *Bill* were prepared and discussed by Council on 16 May and sent to the Bills Committee. Members attended a Panel on Security meeting at Legco on 22 May and meetings with representatives from the Security Bureau on 23 May and 5 June. There was a Bills Committee meeting on 10 June to discuss The Law Society's concerns and members provided additional submissions on LPP which had not been addressed by the Security Bureau.

The Committee Stage Amendments ("CSAs") were received on 3 July and additional CSAs were received on 10 July and both sets were reviewed by the Working Party, submissions prepared and subsequently approved by Council on 19 July and sent to LegCo. The *Bill* was eventually passed on 6 August.

**Members of the Committee:**

Lester G. HUANG (*Chairman*)  
 BUT Sun Wai  
 Eric T.M. CHEUNG  
 Joseph C.W. LI  
 Andrew POWNER  
 Anthony R. UPHAM  
 Kevin K.F. YAM

Secretary: Director of Practitioners Affairs

**HONG KONG LAWYER EDITORIAL BOARD**

Members of the Editorial Board met monthly and worked closely with LeixNexis, the publisher of *Hong Kong Lawyer*, to monitor the overall quality and standard of the publication and to identify topics of interest to the profession.

**Members of the Committee:**

Cecilia K.W. WONG (*Chairman*)  
 Thomas S.T. SO  
 Bonnie S.Y. CHAN  
 Charles C.C. CHAU  
 Steven LEE  
 George Y.C. MOK  
 Patrick R. MOSS  
 Vivienne W.M. NG  
 Michael PHILLIPS  
 Anne SCULLY-HILL  
 Christopher SHERRIN  
 Michael WILKINSON  
 WONG Tak Shing

Secretary: Assistant Director, Practitioners Affairs (General)

# Standing Committee on Practitioners Affairs

## YOUNG SOLICITORS' GROUP (YSG)

YSG was established as a Sub-committee of the Standing Committee on Practitioners Affairs to cater for the needs and interests of members of less than five years standing. One of the aims is to encourage communication between young members and to facilitate dialogue between them and with senior members of the profession.

### Friday Lunch Gatherings

Members have the opportunity to meet socially through informal lunch gatherings in the Law Society's Clubhouse and also meet with members of Council, the Standing Committee on Practitioners Affairs and the YSG. 15 lunch gatherings were organized during the year.



- a lecture delivered by Professor Liu Meixun at the Tsinghua University;
- a court hearing in the People's Court in the Haidian District of Beijing;
- visits to the Hong Kong and Macao Affairs Office of the State Council of the People's Republic of China, the China Securities Regulatory Commission, and the Beijing Municipal Bureau of Justice;
- meetings with officials or representatives of the Beijing Municipal Lawyers Association, the Beijing Organizing Committee for the Games of the XXIX Olympiad, the Beijing Municipal Environmental Protection Bureau, the Beijing Administration for Industry and Commerce (Business Registration Department), and the People's Government of Beijing Municipality Hong Kong & Macao Affairs Office



### Visit to Beijing

A group of 20 young members, at the invitation of the Liaison Office of the Central People's Government in Hong Kong, visited Beijing from 20 to 24 May. The delegation attended the following activities:







### Community and Charitable activities

#### English Tutorial Classes

For the second year, YSG together with the Tung Wah Group of Hospitals (TWGH) ran two sessions of the “*English Learning Programme*” for underprivileged primary children. The programme is an activity-based English learning event where students learned from playing games. Each tutorial had a different theme which included attending Easter and Christmas parties, interviewing foreign tourists and attending the *Law Society’s Rule of Law Drama Competition*. More than 100 members of the Law Society and their friends signed up for the programme.





# Standing Committee on Practitioners Affairs

## YSG Charity Walk

In March, YSG organized a Charity Walk to raise funds to foster elementary education in rural China. The event generated a total of \$573,159 in donations and the funds will be spent on rebuilding a school in Sichuan province. More than 300 members of the Law Society, their families and friends attended the walk. YSG will organize follow up visits to the school when the rebuilding project has been completed.



## Rule of Law Education Programme

The programme included the *Rule of Law* seminar for members of the Law Society and talks delivered by members to students. The "*Rule of Law Drama Competition 2006*" marked the end of the *Rule of Law* programme which took place at La Salle College on 22 April. The Secretary for Justice, the Hon. Wong Yan Lung delivered the opening speech. More than 500 primary students together with their parents, teachers and members attended the competition.



Rule of Law Drama Competition 2006  
法治·戲劇比賽 2006  
22.04.2006





## Social activities

### YSG Dragon Boat Championships 2006

YSG organised a Dragon Boat Team to participate in “Stanley Dragon Boat Championships 2006” which took place on 31 May. Over 30 members of the Law Society and their friends attended the competition.

Other activities included a wine tasting event co-organised with The Young Professional Committee of The Hong Kong Coalition of Professional Services; lunch gatherings with Hong Kong Institute of Certified Public Accountants, Royal Institute of Certified Surveyors Asia Pacific; and a Christmas gathering co-organised with two other professional bodies.

#### Members of the Committee:

Cecilia K.W. WONG (*Chairman*)  
 Sylvia W.Y. SIU (*Vice-Chairman*)  
 Howard K.H. LAM (*Vice-Chairman*)  
 Bonnie J.Y. CHAN  
 Serina K.S. CHAN  
 Charles C.C. CHAU  
 Cindy C.S. CHIU  
 Martin K.Y. KO  
 Tracy N.L. LAM  
 Lynn LEE  
 Vitus W.H. LEUNG  
 Vivienne W.M. NG  
 May TAM  
 Victor C.K. YAU

Secretary: Assistant Director, Practitioners Affairs (General)



# Standing Committee on Practitioners Affairs

## HONG KONG SOLICITORS INDEMNITY FUND LTD.

Hong Kong Solicitors Indemnity Fund Limited ("the Company") was established by The Law Society and empowered by the *Solicitors (Professional Indemnity) Rules* ("the Rules") to manage and administer the PIS and the Solicitors Indemnity Fund ("the Fund") subject to direction in certain areas by the Council.

The Company held a total of 12 board meetings during the year, one Extraordinary General Meeting and an Annual General Meeting.

The Company considered:

- Issues in relation to the conduct of claims referred to the Company by the PIS Claims Committee
- The performance of the PIS Broker and Manager
- The renewal of the appointment of the PIS Broker and Manager
- The renewal of reinsurance of the PIS
- Proposed amendments to the Rules
- The monthly management accounts and the audited accounts of the Fund and the Company
- The overall financial position of the Company and the Fund
- The preparation of the PIS Annual Report
- *The Land Titles Ordinance (Amendment) Bill*
- Dissemination of claims information to the Land Registry

- Negotiation and settlement of the outstanding liabilities owed by HIH Casualty and General Insurance Ltd. ("HIH") and FAI General Insurance Company Ltd. ("FAI Australia") (both in liquidation) to the Company
- Matters arising in the Creditors' Committees of HIH and FAI Australia (in liquidation) and FAI First Pacific Insurance Co. Ltd. (in provisional liquidation)
- The role of the PIS Investment Sub-committee, the Company and the Council in monitoring the investments of the Fund
- Default in payment of shortfall contributions
- Alteration of the Articles of Association of the Company
- Whether solicitors from Panel firms should sit on the Claims Committee and the charging rates of Panel Solicitors
- Enquiries by member firms relating to the PIS

A total of 163 notifications of claims were received by the Claims Manager, ESSAR Insurance Services Ltd. ("ESSAR") during the 2005/2006 indemnity year, i.e. from 1 October 2005 to 30 September 2006 and the grace period from 1 October 2006 to 29 November 2006. 19 of the notifications resulted in proceedings and 144 remained as notifications.

The number of claims for the last 20 indemnity years and the number of members as at 30 September of each indemnity years are as follows:-

Year	Number of Claims*	Increase/Decrease from Previous Year+	Number of Members
1986/87	64	—	1,384
1987/88	58	-9%	1,625
1988/89	126	117%	1,754
1989/90	178	41%	2,060
1990/91	72	-60%	2,350
1991/92	93	29%	2,572
1992/93	118	27%	2,847
1993/94	143	21%	3,161
1994/95	151	6%	3,451
1995/96	150	-1%	3,784
1996/97	176	17%	4,197
1997/98	336	91%	4,494
1998/99	483	44%	4,612
1999/00	263	-46%	4,771
2000/01	230	-13%	4,946
2001/02	214	-7%	5,086
2002/03	205	-4%	5,191
2003/04	158	-23%	5,317
2004/05	145	-8%	5,498
2005/06	163	12%	5,666

\* Number of Claims includes claims notified within the grace period.

+ Percentage of increase or decrease has been calculated to the nearest decimal point.

Claims notified in the 2005/2006 indemnity year are categorized as follows:-

Company/Commercial	27
Conveyancing	54
Landlord and Tenant	2
Litigation	51
Miscellaneous	4
Patents and Trademarks	21
Probate	3
Tax Matters	1
Total	<u>163</u>

Notifications are also categorized into negligence or fraud claims. After investigation, none of the 163 notifications for the 2005/06 indemnity year has been classified as fraud claims.

The total liability of the PIS for the 2005/2006 indemnity year calculated on the basis of claims paid and claims reserved was \$21,547,476 of which \$3,049,603 consisted of claims paid (including costs) and \$18,497,873 of claims reserved.

As at 30 September 2006, the total amount of claims paid (including costs) since the inception of the self-insured Scheme in 1986 amounted to \$1,196,208,202 and the total amount reserved was \$561,524,271.

A detailed account of the operation of the PIS and claims data as well as the audited accounts of the Fund as at 30 September 2006 will be published in the PIS Annual Report for the 2005/2006 indemnity year.

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## Directors of the Company:

Peter R. GRIFFITHS (*Chairman*)  
Francis W.C. CHONG  
Albert B.K. DAN  
Christopher G. HOWSE  
James E. JAMISON  
Anson K.C. KAN (resigned in May)  
Peter C.L. LO  
Amirali B. NASIR  
Ludwig S.W. NG  
NG Wai Yan  
Richard N. TANNER  
Norris H.C. YANG

Company Secretary: ESSAR

## PIS CLAIMS COMMITTEE

Claims are handled by the Claims Committee in conjunction with the Claims Manager, ESSAR. The Claims Committee and its Sub-committee met six times to discuss both new and on-going claims.

## Members of the Committee:

Christopher G. HOWSE (*Chairman*)  
David G. SMYTH (*Vice-Chairman*)  
Charles W. ALLEN  
Denis G. BROCK (resigned in March)  
David C. CHU  
Colin B. COHEN  
Stewart J. CROWTHER  
J. Martin HEATH  
Ludwig S.W. NG (resigned in March)  
Peter K.H. NGAI  
Ronald W.T. TONG

Secretary: ESSAR

## PIS INVESTMENT SUBCOMMITTEE

The PIS Investment Sub-committee met quarterly.

It is the practice of the Sub-committee to invite the Fund's investment managers to give a presentation on the performance of the Fund's investments and to provide their outlook on market trends for each quarter.

The two investment managers of the Scheme are AllianceBernstein Hong Kong Ltd. ("AllianceBernstein") and Credit Agricole Asset Management Hong Kong Ltd. ("Credit Agricole").

About 60% to 70% of the Fund's portfolio is invested in bonds and cash and about 30% in equities. The investment objectives of the Fund are to:-

- (a) achieve, in the long term, a rate of return over and above the Hong Kong consumer price inflation;
- (b) preserve capital; and
- (c) achieve, in the long term, a rate of return over the performance benchmark.

2006 was a good year for equities. Solid economic growth, robust corporate earnings and booming mergers and acquisitions activities extended the rally in global equities. The *MSCI World Index* finished the year with a return of 20.1% in U.S. dollar terms. The *MSCI Zhong Hua Index* increased 25.1% in Hong Kong-dollar terms in the last quarter, driven by expectations of Renminbi appreciation, declining interest rates and attractive valuations.



Increases in official interest rates in many countries moderated growth to a certain extent. Inflation remained benign. Bond returns for the euro area were negative as official rates increased throughout the year. Returns on Government bonds for most other major economies were negative to modestly positive. The Lehman Global Aggregate Bond Index returned 3.63% in U.S. dollar terms in 2006.

The portfolio managed by AllianceBernstein provided an annual return of 12.4% in U.S. dollar terms and the portfolio managed by Credit Agricole provided an annual return of 13.92% in U.S. dollar terms.

#### **Members of the Subcommittee:**

Peter C.L. LO (*Chairman*)  
 John S. GALE  
 Philson W.H. HO (resigned in January)  
 IP Shing Hing  
 Ludwig S.W. NG  
 Kevin C.K. SHUM  
 Christopher H.W. SO  
 Norris H.C. YANG

Secretary: Assistant Director, Professional Indemnity Scheme

### **PROFESSIONAL INDEMNITY ADVISORY COMMITTEE**

This Committee is responsible for reviewing and advising on any issue relating to professional indemnity insurance referred to it by the Council, the Company or the Claims Committee.

The Committee and its Working Party met twice during the year. The issues considered by the Committee and the Working Party included proposed amendments to the Rules, the *Solicitor Corporations Rules*, the amendments to the standard letters issued by ESSAR to the insured, and the treatment of disbursements in the calculation of gross fee income.

#### **Members of the Committee:**

Robin S. PEARD (*Chairman*)  
 Kevin R. BOWERS  
 Steven J. DEWHURST  
 Christopher G. HOWSE (resigned in May)  
 Lawrence Y.H. LEE (Aon Hong Kong Limited)  
 Susan P.S.K. LIANG  
 NG Wai Yan  
 Peter K.H. NGAI  
 David G. SMYTH  
 Jane STRAWBRIDGE (ESSAR) (resigned in March)  
 Fiona J. STEWART  
 Gareth H. THOMAS  
 Norris H.C. YANG

Secretary: Assistant Director, Professional Indemnity Scheme

### **PIS PANEL SOLICITORS SELECTION BOARD**

The PIS Panel Solicitors Selection Board was established by the Council to consider the tender applications for appointment to Panel Solicitors and to make recommendations to the Council on the appropriate appointment.

The Panel Solicitors were:

Allen & Overy  
 Baker & McKenzie  
 Barlow Lyde & Gilbert  
 Clifford Chance  
 Deacons  
 Fred Kan & Co.  
 Herbert Smith  
 P.C. Woo & Co.  
 Richards Butler  
 Stephenson Harwood & Lo  
 Wilkinson & Grist  
 Woo, Kwan, Lee & Lo

# Standing Committee on Practitioners Affairs

## **Members of the Board:**

WONG Kwai Huen (*Chairman*)

Stephen W.S. HUNG

Anson K.C. KAN (resigned in February)

Kenneth S.Y. NG

Thomas S.T. SO

Secretary: Assistant Director, Professional Indemnity Scheme

## **WORKING PARTY ON PIS ACCOUNTANT'S CERTIFICATES AND CONTRIBUTIONS**

The Working Party is responsible for considering and making recommendations to the Council on the appropriate action to be taken against those firms which have, in breach of the Rules, failed to submit an accountant's certificate relating to their annual gross fee income on or before 15 August, or pay their annual contributions on or before 30 September each year.

## **Members of the Working Party:**

IP Shing Hing (*Chairman*)

Albert B.K. DAN

Anson K.C. KAN (resigned in May)

NG Wai Yan

WONG Kwai Huen

Secretary: Assistant Director, Professional Indemnity Scheme