

STANDING COMMITTEE ON PRACTITIONERS AFFAIRS

The Standing Committee oversees the work of 21 Committees, one Sub-Committee and six Working Parties. It met formally on six occasions.

Locums

The Standing Committee had discussed a request from a member that The Law Society should examine the benefit of organising a locum service to provide relief to sole practitioners during the temporary absence of the practitioners who may for example wish to take a holiday or faces an unexpected medical emergency. The Standing Committee decided to conduct a survey of the 318 sole practitioners and noted only 36 responses were received producing an 11% response rate. However, of those responding there was very low level of interest in such a service, and so the Standing Committee decided not to proceed.

Law Reform Commission (“LRC”) Report: *Service as a Juror*

The Standing Committee settled The Law Society’s response to the LRC’s report after consultation with the Civil Litigation and Criminal Law and Procedure Committees in April.

Survey on the Supply and Demand for Legal Services

This matter was reviewed by the LegCo Panel on Administration of Justice and Legal Services (“AJLS”) in June. The report had taken almost three years to complete and The Law Society’s representative attending the AJLS meeting focused on the policy initiatives in the report. It has been acknowledged there is a mis-match in the supply and demand for legal services and the Administration should review policy by providing greater public access to legal services with one possibility being the creation of Community Law Centres. We drew the attention of the Administration to the fact that pro-bono activities by solicitors can attract unlimited liability therefore there must be adequate professional indemnity insurance in place for practitioners who provide pro bono services. The discussion on policy is continuing.

Taxation: Review of the Party and Party Rate

In January, the Standing Committee had originally decided the party and party rates were fair given the down turn in the economy during the Asian Economic Crisis and then again in 2003 with the SARs epidemic. However, with the improvement of the economy from 2006, some members of our profession complained that law firms faced significant increases in payroll and rentals. In response, a decision was made by the Standing Committee to explore the possibility of increasing the party and party rates. A meeting took place with the Registrar and the Taxing Masters on 9 October. The Registrar indicated the Judiciary would wish to have data on the charge-out rate of solicitors’ firms in order to consider the matter further. The Committee decided to conduct a survey of members to obtain this data but given the *economic tsunami* in the last quarter of 2008 a decision was made by Council to place the review on hold until September 2009.

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Gross Sum Assessments (GSA)

The Standing Committee was asked to enquire whether the Taxing Masters would allow payments to practitioners for excessive waiting times when attending the 3-min List. The Registrar and the Taxing Masters indicated they would be unwilling to do so as they considered it unfair to ask the paying party to pay for costs which were incurred outside the control of either party. However, the Registrar indicated the Judiciary would review the listing system as there was an acknowledgment of delays during the 3-min List hearings.

Law Costs Draftsmen (“LCDs”)

The Registrar had raised concerns that some LCDs were attempting to appear for litigants in person as well as drafting lists of objections for taxation hearings. It was noted that unrepresented litigants would have no recourse to take action against such LCDs if they fail to do a proper job as they are not required to maintain professional indemnity insurance. The Judiciary took the view that LCDs had no right to appear at those hearings (when they were not instructed by a solicitor). The Standing Committee convened a working party to review the role of LCDs and the scope of the Law Society’s regulatory reach. The Working Party met on 2 December and agreed to arrange an informal meeting with LCD representatives to discuss the way forward.

Competition Law

The Working Party on Competition Law prepared submissions on the Consultation Paper published on 6 May by the Commerce and Economic Development Bureau “*Detailed Proposals for a Competition Law*” and finished its work in July. The Standing Committee agreed a new Competition Law Committee should be established as the Government intends to introduce legislation during this legislative session. A circular inviting members to apply for co-option was issued in July; 20 members applied and after consideration, it was agreed the existing members of the Working Party should be selected as members of the new committee as well as five of the 20 applicants.

Members of the Standing Committee:

Alex T.H. LAI (*Chairman*)

Simon H. BERRY

Geoffrey N. BOOTH

Simon M.Y. CHAN

E. John DAVISON

Junius K.Y. HO (*resigned in May*)

Stephen W.S. HUNG

Andrew JEFFRIES (*resigned in April*)

J.C. Nicholas MILLAR

Paul C.Y. TAN (*resigned in June*)

Cecilia K.W. WONG

Simon W.L. WONG

Kevin K.F. YAM

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

ADR COMMITTEE

The ADR Committee met in November and conducted the rest of its business by e-mail.

Draft Practice Directions (“PD”) on ADR and the Revised draft PD on Mediation

Members reviewed the two draft PD and supported the introduction of mediation to provide where possible early settlement of disputes with the attendant savings in costs.

With the implementation of the Civil Justice Reform (“CJR”) in April 2009, the Committee decided to arrange a seminar on Mediation and ADR to discuss the new PD on Mediation, as well as arbitration, neutral evaluation and training as a mediator. In addition, members recommended the publication of an explanatory pamphlet on mediation which could be used by members to explain the mediation process to their clients.

Joint Consultative Committee (“JCC”)

Representatives attended the JCC meetings at the Hong Kong International Arbitration Centre on 26 March and 19 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

CIVIL LITIGATION COMMITTEE

The Civil Litigation Committee met eight times and dealt with the following issues:

Enforcement of Court Judgments in Civil Cases

In February 2007, the Law Society sent submissions on the Enforcement of Civil and Family Judgments to the AJLS including comments on: the Bailiff’s Office, a recommendation to introduce legislation on Attachment of Income Orders, and the collation of data on court judgments. The Chairman attended an AJLS meeting on 28 January and noted the Judiciary would be unlikely to conduct any policy review until the CJR had been implemented.

Standing Committee on Practitioners Affairs

CJR

A significant amount of the Committee's time was devoted to reviewing the draft amendments to the subsidiary legislation and draft practice directions after the passage of the *Civil Justice (Miscellaneous Amendments) Bill 2007* on 30 January. Members undertook a "desktop review of the subsidiary legislation" which included amendments to the High Court Rules and District Court Rules. The Committee noted The Law Society was content to accept the reforms published in March 2004 in the *Final Report of the Chief Justice's Working Party on Civil Justice Reform* as it was not in the public interest for each issue, which had been debated extensively since November 2001 to be re-visited, nor was it The Law Society's role to audit the proposed amendments to the subsidiary legislation but rather to check they were in order.

Mediation Pledge

The Chief Justice's Working Party on Mediation and ADR invited the Law Society to consider adopting a "Mediation Pledge" as an alternative to litigation. The Committee did not agree with this noting litigators should advise their clients on all options, including mediation. Members suggested updating the *"Hong Kong Solicitors' Guide to Professional Conduct"* by adding the following commentary: *"A litigation solicitor should consider and if appropriate advise his client on alternative dispute resolution procedures such as mediation, conciliation and the like"*.

The Council endorsed the recommendation in September and the new commentary came into effect on 1 October.

Judiciary's Practice Directions

In mid-July, the Judiciary circulated a set of draft practice directions the majority of which were technical. However members expressed significant concern on the new PD on ADR which concerns were also echoed by the Bar Association. The Chief Judge organized a meeting with the Steering Committee on CJR on 19 September when these concerns were discussed. Initially, the Judges indicated the criticisms were not significant and expressed the view it was the responsibility of the professional bodies to educate their members on mediation. In light of this response, the Committee recommended a formal letter be sent to the Chief Judge stating The Law Society's support for the introduction of mediation, but expressing serious concerns on the contents of the PD on ADR as drafted. The following points were also raised: the practical issues of implementation, lack of a full report on the Pilot Scheme on Mediation and the Construction List, and the other two Pilot Schemes in place for Building Management Cases under PD3.3 and petitions under Section 168A of *Companies Ordinance*, the time needed to educate practitioners and the public on mediation, and concerns over threats of costs sanctions.

The Judiciary considered The Law Society's concerns and issued a new draft PD in mid November now entitled "Practice Direction on Mediation". Further discussion took place with the Judiciary, particularly on the proposed policy of imposing costs sanctions as a means of encouraging the use of mediation which could result in failure of the policy generally. The Chief Justice subsequently indicated the imposition of costs sanctions would not be implemented until 2010 as he recognized the importance of educating not only practitioners but also the public on the importance of mediation as an alternative means to settle disputes.

In relation to the remaining practice directions, final comments were sent to the Judiciary in December.

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Taxation

In April, the Committee agreed to issue a circular to remind practitioners to make more use of paper taxations, the new chronological bill format, and the statement of costs in gross sum assessments should be brief.

Review of Party and Party Rates

The Committee suggested The Law Society should enquire whether there could be a review of the existing party and party rates as these were last changed in July 1997. A meeting was arranged with the Registrar and Taxing Masters on 9 October who were generally sympathetic, but given the economic downturn, a decision has been made not to proceed.

The Committee also considered:

- A request by the Commissioner for Privacy to issue a circular on the provisions of the *Personal Data (Privacy) Ordinance*
- Law Reform Commission's Consultation Paper on *Jurors*
- Law Costs Draftsmen acting for litigants in persons
- Resumption of Judicial Proceedings after Gale or Rainstorm Warning
- *Hong Kong Court of Final Appeal Fees (Amendment) Rules 2009*
- *District Court Civil Procedure (Fees) (Amendment) Rules 2009*

Members of the Committee:

Nicholas D. HUNSWORTH (*Chairman*)

Mary S.H.CHAN (resigned in May)

A. Clinton D. EVANS

Johnny C.M. FEE

D. Nigel FRANCIS

Warren P. GANESH

Junius K.Y. HO

Joseph S.M. KWAN

Jeffrey H. LANE

Brenda F. LEE

Mark LIN

Amirali B. NASIR

Simon D. POWELL

Kenneth W.Y. WONG

Sherman C.N. YAN

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

COMPANY AND FINANCIAL LAW COMMITTEE

The Committee reviewed and made comments on the following:-

- Consultation Paper on Proposed Changes to the *Listing Rules*
- Rewrite of the *Companies Ordinance*
- Consultation Paper on Financial Reporting by Private Companies
- Exposure Draft of proposed amendments to HKICPA SME-FRF & SME-FRS to include Group Accounts and Cash Flow Statement
- Revised PD3.1 and 3.2 Bankruptcy and Winding Up Proceedings
- *Toolkit on Directors' Ethics*

Members of the Committee:

Patrick C.K. WONG (*Chairman*)

Grace K.W. CHAN

CHAO Tien Yo

Simon S.C. LAI (resigned in November)

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 twice during the year and dealt with consultations via email. One member resigned.

Racial Discrimination Bill

In February, the Committee reviewed and discussed the draft Committee Stage Amendments (“CSAs”) in relation to the following:-

- Application to Government;
- Racial Discrimination;
- A new clause concerning “new arrivals from the Mainland”; and
- Exception for Languages

In March, the Committee continued the discussion and noted the submissions prepared by The Law Society’s Employment Law Committee on the Bill and joint submissions were sent on the draft CSAs in mid April.

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Prevention and Control of Disease Bill

The Bills Committee sought The Law Society's views on the Bill and comments were prepared via email circulation and sent to LegCo on 10 March. Additional submissions were sent on clause 12(2) of the Bill on 21 April and representatives from the Committee met with the Administration on 30 April to clarify The Law Society's views in relation to "compensation arising from loss or damage in consequences of or arising out of the exercise of any requisition power used by the Administration".

Prevention of Bribery (Amendment) Bill 2007

The Law Society attended a Bills Committee meeting in mid March to discuss the applications of certain provisions of the *Prevention of Bribery Ordinance* ("POBO") to the Chief Executive. The Committee had reviewed the constitutional position in late 2005 and had sent submissions to LegCo dated 1 November 2005. It was agreed these submissions should be re-sent to the Bills Committee which stated, inter alia, the Administration should introduce separate legislation to deal with the Chief Executive rather than amend the POBO and an independent Ad Hoc Committee should be considered in order to avoid potential conflict of interest.

The Committee also considered the following:-

- *Legislative Council (Amendment) Bill 2007*
- White Paper on China's Efforts and Achievements in Promoting the Rule of Law
- New draft Code on Politically Appointed Officials

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

IP Shing Hing

Stephen S.Y. LAW

Joseph C.W. LI

LING Bing

POON Kai Cho

Kevin K.F. YAM

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

CRIMINAL LAW & PROCEDURE COMMITTEE

The Committee met monthly to review proposed legislation and areas of interest to criminal law practitioners. Members also participated in small group discussions on specific topics and served on various internal Sub-committees and Working Parties. One member resigned this year and a new member was co-opted to assist in the work of the Committee.

Consultation Paper on Interim Proposals on a Sex Offender Register

At the invitation of The Law Reform Commission of Hong Kong, the Committee reviewed the proposals put forward by its Review of Sexual Offences Sub-Committee in the *Consultation Paper on Interim Proposals on a Sex Offender Register*. The LRC Sub-Committee proposed that pending completion of its review, the Administration should immediately consider introducing a measure to protect children and mentally incapacitated persons (“MIP”) against abuse by paedophiles. This would be an administrative scheme whereby employers of persons engaged in child-related or MIP-related work could check with the police whether applicants had any previous convictions for specified sexual offences. The Council endorsed the recommended submissions, which generally supported the proposal but highlighted a few areas of concern for the LRC Sub-Committee’s consideration.

Criminal Appeals – Direct Contact by Prosecutors upon the Defence Counsel

Concern was raised with the Director of Public Prosecutions (“DPP”) over the practice of some prosecutors in forwarding papers such as the Respondent’s Skeleton Reply directly to the Appellant’s counsel in Criminal Appeal cases without any reference to the instructing solicitors. The DPP agreed to send a reminder note to the prosecutors on the correct practice.

Fees for Transcript and Record of Proceedings

The Committee reiterated its concerns to the AJLS on the high level of fees for CDs and DVDs produced from the Digital Audio and Transcription Services.

Government Assigned Work for Duty Lawyers, Legal Aid Practitioners and Prosecutors on Fiat

The Committee reviewed work assignments to solicitors acting as duty lawyers, legal aid practitioners and prosecutors on fiat. An understanding was sought from the Department of Justice (“DOJ”) on the criteria for appointment to the lists of prosecutors on fiat and the related assignment system. The Committee made a recommendation to the Standards and Development Department to organize relevant CPD courses; recommendations were also made for criminal advocacy courses to be conducted to strengthen the general criminal advocacy skills.

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Practice Direction on “Applications to Stay Criminal Proceedings”

The Judiciary consulted the views of the Committee on its proposed Practice Direction on “*Applications to Stay Criminal Proceedings*”. The Committee raised concerns over the 21 days’ requirement for defendants to give written notice of such applications to the prosecution before the date of the trial as there are circumstances beyond the defendants’ control which render it impossible for them to comply with the requirement, e.g. late disclosure of document by the prosecution, missing witness, etc. As non-compliance of this requirement could result in the court making a wasted costs order, the Committee recommended that a safety valve should be built into the Practice Direction to provide for exceptional situations and to safeguard the profession from being unnecessarily subject to wasted costs order.

Proposed Amendments to “wasted costs” provisions of *Costs in Criminal Cases Ordinance*

The Committee objected to the proposal put forward in Part 7 of the *Statue Law (Miscellaneous Provisions) Bill 2007* to expand the court’s jurisdiction to award wasted costs against a solicitor in criminal proceedings; this is an unjustifiable risk and would impact on the principle of fearless advocacy in criminal proceedings. The Committee supported an alternative proposal by the Bar, i.e. that the jurisdiction of the court to make a wasted costs order may be invoked by (1) “*seriously improper act or omission*”; or (2) “*undue delay or other serious misconduct*” on the part of the legal representative.

Research Report on the Legal Services at the Magistrates’ Courts

The Committee considered the *Research Report on the Legal Services at the Magistrates’ Courts* prepared by the Society for Community Organization (“SOCO”) and met with representatives of SOCO to exchange views.

Retention of Trial/Appeal Bundle

The Committee raised concern with the Legal Aid Department on the requirement for solicitors assigned to take up criminal legal aid work to retain not only their own set of papers but also an identical set of papers returned by barristers at the completion of the assignments. However, the LAD has refused to change this directive. The Committee resolved to highlight its concern to the Legal Aid Services Council.

Review of Criminal Legal Aid Fees

The Committee continued to devote a significant amount of time and effort to its campaign for an overall review of the criminal legal aid fees system. Members lobbied and managed to gain cross-party support in LegCo as well as the support of numerous social groups and the media. The Law Society has consistently stressed the importance for the Government to uphold the spirit of the Basic Law which guarantees adequate legal representation for all and the need for adequate funding of a proper criminal legal aid system. The level of remuneration in these cases should reflect the level paid on party-and-party taxation to a 5-6 years’ experienced solicitor in civil proceedings. The Government has refused to engage in any meaningful discussions with The Law Society. Representatives of the Committee attended AJLS meetings and the Committee will continue to campaign for a just increase in the level of fees.

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Revised Manual for Legal Aid Practitioners

The Committee reviewed the revised *Manual for Legal Aid Practitioners* proposed by the Legal Aid Department and suggested additional comments should be made on “*Retention of Trial/Appeal Bundle*”; consolidated comments were made in April.

Rule 5D of the Solicitors’ Practice Rules (“Rule 5D”)

The Committee recommended a requirement to “*secure*” the written and signed agreement of the instructing person to the terms in a Rule 5D letter as solicitors had no control over whether clients would sign and return Rule 5D letters in all cases. It would be sufficient if: (1) the solicitor has “*made reasonable efforts to obtain*” the written and signed agreement of the instructing person; and (2) the instructing person has by conduct accepted the terms of the Rule 5D letter.

The Committee also reviewed the following:

- *Consultation Booklet on Review of the Control of Obscene and Indecent Articles Ordinance*
- *Law Reform Commission’s Juries Sub-Committee Consultation Paper on Criteria for Service as Jurors*
- *The Statement of Prosecution Policy and Practice 2009 – Code for Prosecutors*
- *Trade Descriptions (Amendment) Bill 2007*
- *35th Annual Report of the Criminal and Law Enforcement Injuries Compensation Boards*

Members of the Committee:

Stephen W.S. HUNG (*Chairman*)

BUT Sun Wai

Bucky K.H. CHAN

Duncan K.C. FUNG

Herman H.M. HUI

Paul M.W. LI

Philip W.I. LI (resigned in May 2008)

Jonathan C.Y. MOK

Kenneth H.S. NG

Andrew POWNER

Kevin STEEL

Anthony UPHAM

Michael VIDLER

Ben K.K. WONG (joined in August 2008)

Secretary: Assistant Director, Practitioners Affairs

Working Party on Criminal Legal Aid Fees Reform Campaign

The Working Party continued to monitor the Criminal Legal Aid Fees Reform Campaign and discuss the appropriate strategies to recommend to the Committee and the Council.

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Members of the Working Party

Stephen W.S. HUNG (*Chairman*)

BUT Sun Wai

Kevin STEEL

Anthony UPHAM

Michael VIDLER

Secretary: Assistant Director, Practitioners Affairs

External Work:

Criminal Court Users' Committee ("CCUC")

The Chairman of the Committee was the Society's representative on the CCUC, which met in April and October. Issues discussed this year included: the use of electronic bundles for criminal proceedings in the High Court; translation of documentary exhibits for Transfer Proceedings in Magistrates' Courts; jury attendance; provision of Specimen Directions to interested parties; Practice Direction on Stay Applications; electronic presentation of evidence; proposed Practice Direction on the raising or submitting of a Human Rights or a constitutional argument; covert recording device in a witness consultation room at the District Court; correct mode of addressing judges and Magistrates; delay in setting down cases, permission for use of laptop computer in court and taxation of costs in criminal proceedings.

EMPLOYMENT LAW COMMITTEE

The Committee met twice during the year.

Employment Tribunal

The Committee discussed two issues of concern arising out of the current operation of the Labour Tribunal namely: the inequity which flows from the unavailability of past decisions and the current time limits for appeal. A letter, signed by the President with details of the concerns was sent to the Chief Justice in June. A meeting was subsequently arranged with a Principal Presiding Officer and representatives from the Judiciary Administrator's Office in late September. The Judiciary Administrator's Office wrote formally to The Law Society in December and indicated it had considered The Law Society's representations but in essence saw no reason to change the status quo. The Committee has agreed to press for reform.

Race Discrimination Ordinance

Submissions were prepared on the draft CSAs on the *Racial Discrimination Bill* in February and on the draft *Code of Practice on Employment* in November.

Members of the Committee:

Duncan A.W. ABATE (*Chairman*)

Y.S. CHEUNG

Dennis C.K. HO

IU Ting Kwok

Edward M.T. KO

Jeffrey H. LANE

Walter Y.W. LEE

Fiona M. LOUGHREY

WONG Kwok Yan

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

FAMILY LAW COMMITTEE

The Family Law Committee met on 11 occasions; two longstanding members resigned and two new members were co-opted in August.

Family Court Users' Committee

The Committee gave its views to the Family Court Users' Committee on the following:-

- **Legal Aid for Children**
The Committee noted the different roles between the Official Solicitor who focuses on “Best Interests of the Child” whilst the *Guardian ad Litem* represents the “views of the child” to the court and considered it important to extend legal aid to cover the provision of Guardians.
- **Child Dispute Resolution (“CDR”)**
The Committee discussed the possibility of the Family Court introducing CDR which is based on the latest developments for less adversarial trials in family law practice, particularly in Australia. However, Hartmann J. reported it would not be possible to adopt CDR as Australia has a different support system in place.
- **Guidelines on Interviewing Children by the Judiciary**
The Committee invited the Judiciary to publish guidelines on interviewing children in contested custody applications but the Family Court Judges declined to issue any statement on policy or guidelines under Section 3(1) of the *Guardianship of Minors Ordinance*.
- **Law Reform Commission Reports**
Members noted the Labour and Welfare Bureau had not put forward any proposals on policy initiatives. The Secretary of the Bureau invited the President and representatives to attend a meeting in April to discuss the Committee's concerns on the lack of progress and reported the Bureau would convene an inter-departmental Working Group to discuss policy. The Bureau indicated its initial focus would be the introduction of legislation on *International Child Abduction*, followed by the introduction of further amendments to the *Domestic Violence Ordinance* to cover same sex couples. The Committee held 2 separate meetings on Saturday mornings to discuss the Law Reform Commission's Report “*Child Custody and Access*” and submissions were sent to the Bureau in September.

The Committee also wrote to the Bureau asking for commitment to enter into a Memorandum of Legal Assistance in relation to enforcement of judgments.

Mediation

- The Committee reviewed the statistical data on the Legal Aid's Pilot Scheme and supported the introduction of mediation in family cases by Legal Aid.

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Civil Justice Reform

- Reviewed the new “Practice Direction for Matrimonial Proceedings and Family Proceedings”

Cross Border Family Cases

ML v YJ

The Committee sent a letter to the Secretary for Justice urging the Administration to introduce legislation based on the English Law Reform Commission’s Report “*Family Law and Financial Relief after Foreign Divorce*” in order to secure the jurisdiction of the Family Court in divorce proceedings commenced in Hong Kong when the opposing spouse commences parallel proceedings in a separate jurisdiction. The judgment in *ML v YJ* had a serious impact on the division of assets.

Lectures and Conferences

The Committee participated in and helped to organise the following:

- *Enhancing Family Functions - Conference on Cross Border Family Divorce from Social and Legal Perspectives* (提升家庭功能「社會及法律角度回應跨境家庭離婚」會議)
- Professor Xia: *Divorce System in Mainland China* (中國大陸的離婚制度)

The Committee also issued two circulars and reviewed the following:-

- Report on “*Outlaw Corporal Punishment of Children*”
- A letter from the Hong Kong Police with statistics on Domestic Violence
- Hague Convention Conference organised by the Hague Convention on Private Law
- SWD’s Report on “*Batterers’ Intervention Programme*”
- *LawWeek 2008*

Members of the Committee:

Helen Y.H. KONG (*Chairman*)

Mary S.H. CHAN (resigned in May)

Winnie W.Y. CHOW

(co-opted as new member in August)

Dennis C.K. HO

Anthony J. HUNG

Barbara A. HUNG

LAM Tze Yan

LEUNG Shek Lim

Jonathan C.Y. MOK

(co-opted as new member in August)

Catherine K.G. POR

Sharon A. SER (resigned in July)

Susan WONG

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

INSOLVENCY LAW COMMITTEE

The Committee conducted its business by e-mail and dealt with the following matters:-

- Issued a circular on HKICPA's Restructuring and Insolvency Faculty in April
- Prepared submissions on Proposed Amendments to Judiciary's Practice Direction ("PD"):-
 - PD3.1 - Bankruptcy and Winding-up Proceedings
 - PD3.2 - Procedure for Filing and Hearing Bankruptcy Petitions by Debtors who are legally represented
- Review of PD3.3 on Pilot Scheme for Voluntary Mediation in Petitions under ss168A and 177(10)(f)

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

INTELLECTUAL PROPERTY COMMITTEE

The Committee met twice and also attended two meetings with the Intellectual Property Department during the year.

Creative Commons Licence

Representatives from the *Creative Commons* gave a presentation in March on its proposal to introduce a local licence which is attempting to provide a middle ground between full copyright, namely "all rights reserved" and "anarchy". Members noted the proposal but indicated the Committee could not, in effect, act as the "Honorary Adviser" to the *Creative Commons*.

Bi-annual Meeting with Intellectual Property Department ("IPD")

The Committee met with representatives of IPD in March and September when the following issues were discussed:

- Working Group on the Users' Manual
- "Groundless Threats"
- Language of important Judgments - a request was made that important judgments in Chinese be provided with translated head notes

Standing Committee on Practitioners Affairs

- Operation of the Registry in relation to the treatment of evidence
- Defensive registrations and certification marks
- The Copyright Tribunal
- Anti-money laundering provisions and registration of a company's details

The Committee also dealt with correspondence from the Judiciary Administrator on a proposal to abolish the *Solicitors' (Trademarks and Payment) Costs Rules*, and also provided representation at a function organized by the Law Association, HKUSU on 26 October.

Consultation Paper on Preliminary Proposals for Strengthening Copyright Protection in the Digital Environment

The Committee prepared submissions on the Consultation Paper in September.

Members of the Committee:

A. Clinton D. EVANS (*Chairman*)

Steven J. BIRT

Ella S.K. CHEONG

Yvonne CHUA

Lindsay B. ESLER

KWONG Chi Keung

Chloe Y.F. LEE

Anita P.F. LEUNG

Rebecca M.C. LO

Henry J.H. WHEARE

Kenny K.S. WONG

Secretary: Director of Practitioners Affairs

LAND USE PLANNING COMMITTEE

The Committee met once and reviewed and made comments on the following:-

Buildings (Amendment) Bill

The Committee met in January to discuss the issue of “minor building works” and submissions were prepared on the lack of clarity on the “scope of toleration” in relation to “minor unauthorized building works” and the impact the new legislation would have on conveyancing practice. Representatives met with the Buildings Department and the relevant Bureau on 4 March to discuss these concerns; as a result of the Committee's recommendations, some amendments were made to the Bill.

Standing Committee on Practitioners Affairs

Members also reviewed:

- *West Kowloon Cultural District Authority Bill*
- *Air Pollution Control (Amendment) Bill 2008*

Members of the Committee:

John DAVISON (*Chairman*)

Michael T.M. HUI

IP Shing Hing

MA Ho Fai

Andrew W.Y. NG

Christopher TUNG

Secretary: Director of Practitioners Affairs

LEGAL AID COMMITTEE

The Legal Aid Committee met on three occasions and dealt with issues by way of circulation of papers.

Criminal Legal Aid Fees

The Committee noted the work progress on the Society's campaign on criminal legal aid fees review. The opportunity was taken to re-state the Society's stance to the AJLS on the importance for the Government to increase its budget on criminal legal aid without delay in order to maintain the integrity of the criminal justice system. The Committee emphasised the principle that no one should be denied access to justice because of lack of means should be upheld, there should be equality of arms between the defence and the prosecution, and fair treatment between the two branches of the profession. The Committee will continue to work with the other Law Society Committees on the campaign.

Five Yearly Review of the Criteria for Assessing the Financial Eligibility of Legal Aid Applicants ("Five-yearly Review")

The Committee submitted views on the 2007 Five-yearly Review. A Committee member also attended the AJLS meeting in June to make oral submissions, including seeking clarifications from the Administration on whether the concerns raised in the 2003 Five-yearly Review would be addressed in the current Review and how the Review would deal with recommendations of the Law Reform Commission in its July 2007 Report on "*Conditional Fees*" that the scope of the Supplementary Legal Aid Scheme should be expanded.

Independence of Legal Aid

The Committee expressed concern to the AJLS on the lack of progress regarding the proposal to establish an independent legal aid authority in Hong Kong.

Standing Committee on Practitioners Affairs

Legal Aid Service and Recovery Agents

The Committee discussed with concern the activities of recovery agents and welcomed the Judiciary's proposal to amend Practice Direction 18.1 on "*The Personal Injuries List*" to require a certificate to be signed by the Plaintiff and his solicitor to confirm that the action is not funded by any third party on the basis of a contingency fee, as this would assist in stamping out the illegal practice of recovery agents.

Proposal on the Permanent Arrangement for Mediation in Legally-Aided Matrimonial Cases

The Committee reviewed the Government's proposal to extend legal aid to cover mediation in legally aided matrimonial cases on a "*permanent*" basis. Instead of fixed hourly rates for mediators' fees, the Government proposed the Director of Legal Aid should consider and decide if the hourly rates quoted by the mediators "*on a case-by-case basis*" are reasonable. The Committee supported the proposal of making the arrangement permanent as a matter of principle as the wider use of mediation was in line with the world trend as well as local efforts to promote mediation as an alternative to litigation. Council endorsed the submissions which urged the Government to provide sufficient funding and full details of its policy on allocation of funding for mediation in legally aided matrimonial cases.

Revised Manual for Legal Aid Practitioners

The Legal Aid Department proposed to update its *Manual for Legal Aid Practitioners*. The Committee reviewed the contents of the revised *Manual* and consolidated comments incorporating the Committee's views and those expressed by other Law Society committees were submitted to the Legal Aid Department on 11 April. A circular was issued in October to publish the revised *Manual* for members' attention.

Members of the Committee

Junius K.Y. HO (*Chairman*)

Dennis C.K. HO

Ambrose S.K. LAM

Amirali B. NASIR

Kevin STEEL

Christine S.Y. TSANG

Leslie K.L. YEUNG

Secretary: Assistant Director, Practitioners Affairs

PERSONAL INJURIES COMMITTEE ("PI")

The Committee met on 12 occasions and held two meetings with the Bar Association in February and June to exchange views on the Judiciary's Practice Direction 18.1.

Practice Direction 18.1 ("PD")

The Committee decided to conduct a thorough review of the PD in order to make recommendations to the PI Judge on existing problems. Members noted the importance of maintaining a Panel of PI Masters with experience of PI work as the PD imposes strict procedures and it is important for the Judiciary to ensure consistency of practice.

Standing Committee on Practitioners Affairs

In February and June, the Committee held meetings with the Bar's PI's Sub-Committee and reviewed the PD commenting on the following:-

- Statements of Truth
- Order 25 Rule 1 and new Proposed Case Management Conference
- Single Joint Experts and Draft Code of Conduct

It was noted there could be problems when expert witnesses refused to conduct joint examinations; agreement was reached that protocols should be introduced in relation to the appointment of Single Joint Experts.

Although not a part of the CJR, there was agreement that it would be appropriate to discuss the creation of a dedicated PI court as the existing system of separate hearings for Employee Compensation cases and common law claims resulted in a significant wastage of costs; the existing system also lacks any efficient mechanism to co-ordinate the progress of the two sets of proceedings.

In July, the Judiciary circulated a draft PD18.1 and members provided detailed commentary on: stay of proceedings where the plaintiff has not provided a letter before action ("LBA"); commentary on the LBA and Schedule A; mutual and frank disclosure by the parties after the LBA has been sent; expressed concern over the definition of "reasonable time" in relation to the provision of medical reports; and indicated solicitors are competent to provide certificates on time estimates. The Judiciary adopted a significant number of the comments and a revised draft was circulated in mid-November.

Part II of the *Mental Health Ordinance* ("MHO")

The Committee had the following comments in relation to the provisions in the draft PD on the MHO:-

- Could medical reports obtained for the PI case be accepted for the MHO proceedings?
- Provide a more speedier process and shorten paper procedures when establishing the Committee;
- Appoint the same judge to approve settlement in the PI action and the Part II application. The Judge will then be in a position to dispense with the need to apply for new medical reports when existing report(s) had been compiled by doctors on the Approved List;
- Ordering a Committee at the checklist stage can cause substantial delay to the main proceedings;
- A Committee should only be established after RHC Order 80 settlement

Standing Committee on Practitioners Affairs

Mediation of PI Cases

The Committee reviewed the draft PD on ADR in August and noted the provisions on mediation in PD18.1. The PD on ADR was subsequently discarded and a new PD on Mediation was circulated. Members expressed support for mediation in PI cases, but were unable to discuss the proposed policy on mediation in the revised PD18.1 as the final approved version had not been circulated. Clarification was also sought on whether the Hong Kong Solicitors' Indemnity Fund Ltd. would provide indemnity to cover solicitors acting as mediators in law practices. This request was passed to the Board of the HKSIF Ltd.

Legal Aid Manual

The Committee proposed the *Manual* should be amended to incorporate the wording of Section 9 of *Legal Aid Ordinance* namely "to enable solicitors to provide opinions and not restrict this role to barristers". In October, the Committee reviewed the updated *Manual* and agreed to seek clarification of the Department's new questionnaire in relation to experts' fees. The Committee also queried the Director's statutory right to claim interests in relation to payment of fees.

Members of the Committee:

Mark F. REEVES (*Chairman*)

Patrick M. BURKE

Eliza L.S. CHANG

Christina W.C. HUNG

Nancy B.Y. LEUNG

Vitus W.H. LEUNG

J.C. Nicholas MILLAR

Amirali B. NASIR

Ludwig S.W. NG

Szwina S.K. PANG

Tommy K.M. WONG

Secretary: Director of Practitioners Affairs

Members of the Sub-Committee on the *Mental Health Ordinance*:

J.C. Nicholas MILLAR (*Chairman*)

Eliza L.S. CHANG

Szwina S.K. PANG

Tommy K.M. WONG

PROBATE COMMITTEE

The Probate Committee reviewed issues and attended to members' enquiries relevant to probate practice and procedure. The Committee maintained close contact with the Probate Registry through the Joint Standing Committee on Probate Practice, which comprises the Registrar of High Court, Probate Masters, Chief Probate Officer and members of this Committee. Members also assisted in processing applications for publication in the weekly *Enquiries from Solicitors on Wills, Codicils and other Testamentary Dispositions*.

Standing Committee on Practitioners Affairs

Enquiries from Solicitors on Wills, Codicils and other Testamentary Dispositions

The Committee reviewed the *Will Search Mechanism* and re-issued the circular on this in October to make clear The Law Society would only consider such applications that were: (1) properly made by interested parties; and (2) if a death certificate could not be produced, accompanied by a written confirmation in lieu of the death certificate. The prescribed application form was further refined to require the Applicant firm to specify clearly the capacity or the interest of the client in the deceased estate.

PCLL Probate

The Committee maintained its objection to a proposal by the University of Hong Kong to remove “*Probate Practice*” as a compulsory core subject on the PCLL syllabus despite counter-proposals by the University of Hong Kong to introduce “*succession to property*” in the Core Property Transaction course but for the drafting of wills and applications for grants to remain to be covered in elective courses. Members did not agree with the proposed approach as the drafting of wills and applications for grants were services available in all but a few highly specialized legal practices in town.

Practice Direction L4 – Attestation of Documents

The Committee reviewed the effect of breaches of Practice Direction L4 and endorsed the views of the Property Committee that whether non-compliance of PD L4 would render the relevant certification of any particular document invalid would depend on the legal context under which the document was required to be certified.

JOINT STANDING COMMITTEE ON PROBATE PRACTICE

The Joint Standing Committee met in May to discuss, inter alia, the following:

- *Requirement for the Filing of a Checklist with all the Supporting Documents at the Time of Application for a Grant*
- *Use of Proper Forms*
- *Internal Case Management of the Probate Registry* – three new measures were introduced by the Judiciary to expedite the Grant issuance process; i.e. for Probate Masters to:
 - review applications which have been filed for 9 months or more
 - fix deadlines for compliance with requisitions
 - fix appointments on their own initiation to see the parties
- *Affixing of Court Seal on the Grant*
- *Telephone Enquiries*

Standing Committee on Practitioners Affairs

The Committee doubted the practicality of imposing deadlines on practitioners to comply with requisitions since it might not be within their control to obtain a prompt instructions to the requisitions. A circular was issued in October to remind members of the requirement to lodge a checklist upon the filing of an Application for a Grant, to adopt the updated Specified Probate Forms and to show professional courtesy when making telephone enquiries to the Probate Registry.

Members of the Committee:

Herbert H.K. TSOI (*Chairman*)

Helen Y.P. CHAN

Albert C.Y. HO

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 in regular monthly meetings, and also met with representatives of Government departments and other organisations on specific issues. Each member of the Committee continued to consider and determine applications for waivers of DMC Guidelines (511 applications); and applications for deviations from forms of Agreement for Sale and Purchase approved under Rule 5C of the *Solicitors Practice Rules*, Cap.159H. Members also served on internal Working Parties, and as the Society's representatives on external Committees/Working Parties on property related issues. Following the resignation of 2 members, the Committee co-opted 2 new members to cope with its heavy workload.

Consent Scheme Agreement – Definition of “Saleable Area”

Representatives of the Committee attended joint meetings convened respectively by the Consumer Council in April and the Administration in August, which included representatives from the Estate Agents Authority, Hong Kong Institute of Architects, Hong Kong Institute of Surveyors, Real Estate Developers Association of Hong Kong, etc., to discuss how to ensure consistency in the sales literature for Consent Scheme transactions to enable consumers to have a clear understanding of the area of the property on offer. The Administration considered the current definition of “*saleable area*” to be misleading to consumers and proposed to split the description of different areas of the property in the Consent Scheme Agreement into: (1) “*saleable area of the unit*” and (2) “*other areas*”. The Committee commented on the drafting of the revised documents to ensure they reflect the consensus of the parties, and a circular was issued in October on the revised Agreement.

Standing Committee on Practitioners Affairs

Consultation on the Removal of Outstanding Stopped Instruments under the Land Registration Ordinance (Cap. 128)

The Land Registrar consulted the views of The Law Society on a revised proposal to address the problem of outstanding stopped instruments in the Land Registers. The previous proposal put forward in the *Land Registration (Amendment) Bill 2000* was to empower the Land Registrar to remove stopped deeds but this was withdrawn in 2002 as no consensus could be reached on the priority position between competing interests. The revised proposal empowers the Land Registrar to apply to court to determine the registrability of a stopped deed. A circular was issued in May to invite views from the general membership and the Committee submitted its in-principle support subject to review of the draft legislation.

Government's Policy on Breaches of Land Grant Terms

The Committee considered the Judgment in *Wong Kwok Yan and Anor. v. Pon Chi Lok* (03/07/2008, CACV38/2008) and expressed concern with the Director of Lands on the Government's policy on breaches of Land Grant terms. Members observed that technical breaches of Land Grant terms were a common occurrence but the relevant Government departments would not respond to enquiries by vendors' solicitors on the Government's stance in a timely manner, thus rendering it impossible for the vendor to fulfill his obligation to give good title to the property. The Committee urged the Government to provide (a) a clear policy regarding technical breaches of a Land Grant; and (b) a performance pledge imposing a time limit for the relevant Government department to respond to relevant enquiries.

Land Titles Ordinance

The Committee continued to monitor the work progress of the title registration legislation and reviewed and endorsed the draft submissions recommended by the Working Party on Land Titles Ordinance on the draft Land Titles (Amendment) Bill (2nd working draft).

New Search System for Land Records

The Land Registry planned to implement a new search system by the end of 2009 to overcome the constraints of the Integrated Registration Information System ("IRIS"), and consulted the Committee on the proposed design outline. The Committee highlighted problematic areas in the IRIS system noting the existing search system is not user-friendly as it requires the searcher to start each search on a unit afresh even for searches on several units in the "same" building, and that the registration memorial number comprises a long list of numbers which are prone to errors, etc.

Non-Commercial Third Party Surety of a Three-Party "All-Monies" Mortgage

The Committee discussed the concerns of the Consumer Council over the banking practice requiring a third party surety to execute an "all-monies mortgage" to guarantee not only the initial loan but also future advances. The Committee believed that for the interests of all parties concerned and in order that banks could enforce the surety obligations, it was very important to ensure the third party surety clearly understands his obligations. Members suggested the Consumer Council should take this up with the Hong Kong Monetary Authority and the Hong Kong Association of Banks. The banking industry should consider changing its practice and banking code to require a limit on the loan to be advanced in cases involving third party sureties.

Standing Committee on Practitioners Affairs

Part 6 of the *Statute Law (Miscellaneous Provisions) Bill 2008* – Original Pre-Intermediate Root Title Documents

The Committee devoted much time and effort this year in following up with the DOJ on its request to introduce legislation to resolve the difficulties caused to conveyancing practice 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. It engaged in extensive discussions with the DoJ on the proper form the proposed new S. 13A and revised clauses 8 and 9 of the Second Schedule of the *Conveyancing and Property Ordinance* (Cap.219) should take, and also reviewed comments made by the Bar Association of Hong Kong and other stakeholders. Council endorsed the Committee's recommendation and a Senior Counsel was engaged to review the draft legislative amendments to ensure they would be effective in alleviating the adverse impact of the 2 Judgments. The Committee submitted written views to the Bills Committee; Committee members also lobbied individual LegCo members and attended AJLS meetings to make representations on the draft legislation which came into operation on 11 July.

Practice Direction A12 – Warning Notices

The Committee reviewed Warning Letters A1 and A2 issued under *Practice Direction A12*. A recommendation was made to the Council to revise the Warning Letters as the amount to be forfeited should a purchaser withdraw from the purchase, i.e. 5% of the purchase price, did not accurately reflect the position of pre-sale of “non-residential units”. A circular was issued in June.

Practice Direction P – Guidelines on Anti-Money Laundering and Terrorist Financing

The Committee reviewed *Practice Direction P* and a draft leaflet explaining the requirements to the general membership. Members reflected their concerns on PD P to the Anti-Money Laundering Committee, including: the effect PD P may have on project conveyancing given solicitors were subject to a three-day time limit to arrange execution of the formal agreements; queried the need to “verify” the address and occupation of clients in addition to “obtaining” such information, etc. The Committee urged The Law Society to provide clear guidance to enable member to fully comply with the requirements.

Rule 5C Solicitors' Practice Rules – Revised Approved Forms (“Rule 5C forms”)

The Committee followed up on its application for the Chief Justice's in-principle approval of the proposed amendments to the Rule 5C forms as a result of the implementation of the 5-day clearing week policy by the banking industry. The consolidated circular on Rule 5C was revised and re-issued in June. The Committee also embarked on a new revision exercise on the Rule 5C forms in view of (1) the revisions to the Consent Scheme form by the Legal Advisory and Conveyancing Office; and (2) the introduction of a new Section 13A to the *Conveyancing and Property Ordinance* (Cap. 219).

Shenzhen Lawyers' Association

Committee members met with representatives of the *Shenzhen Lawyers' Association* in December and provided a briefing to the delegation on the development of Hong Kong's conveyancing system.

Standing Committee on Practitioners Affairs

Special Registers for Standard Term Documents (“STD”) and Powers of Attorney (“PAs”)

Members continued the discussion on the Land Registry’s proposal to set up Special Registers for STD and PAs. The Committee did not object to the proposal on STD but expressed reservations on the proposal to set up a PA register, notwithstanding contrary views expressed by the Working Party on Land Titles Ordinance. The Committee did not see how the proposal would enhance environmental protection when the vendor was obliged by law to “produce” a certified copy of the relevant PA for proof of title in a transaction. On the other hand, there were concerns that a PA Register would make a PA a public document, thus imposing additional burden on members to search the Register but with no guarantee that the Register would address the problem of lost PAs.

Stakeholding of Deposits

The Committee met with the Estate Agents Authority (“EAA”) to discuss the latter’s concern that solicitors’ advice to their vendor clients has made it difficult for estate agents to comply with the EAA guideline requiring stakeholding of deposits arrangement to be put in place in cases with undischarged mortgages. The Committee did not think The Law Society should dictate how solicitors should advise their clients, noting that it could be against the interest of a vendor to agree to the stakeholding arrangement in certain circumstances. It recommended the EAA to consider issuing a further circulate to clarify to its members that whether the stakeholding requirement was necessary would depend on the circumstances of the case in question, e.g. the amount of outstanding mortgage loan involved and the bargaining power of the parties.

External Work:

The Committee has representatives on the following external groups and committees:

- Land Registry Customer Liaison Group
- Land Registry Joint Standing Committee

The Committee also considered:

- *Building (Amendment) Bill 2007*
- *Hubei Enterprises Ltd. & Ors v. Livasiri & Co (a Firm) & Ors FACV No.23 of 2007*

Members of the Committee

Emily Y.M. LAM (*Chairman*)

Lilian CHIANG

Wendy CHOW

Ambrose LAM

Patrick K.H. LAM (resigned in May 2008)

Mabel M.B. LEE (resigned in September 2008)

Angela W.Y. LEE

Vincent W.S. LIANG

Amanda L.Y. LIU

MA Ho Fai

Billy W.Y. MA

Steven M.W. SHUM (joined in September)

Ellen TSAO (joined in September)

David P.H. WONG

Terry P.L. YEUNG

Secretary: Assistant Director, Practitioners Affairs

WORKING PARTY ON LAND TITLES ORDINANCE

The Land Titles Ordinance was enacted in July 2004 subject to the Administration's undertakings to, inter alia, conduct a review of the Ordinance before its commencement and to work with The Law Society to address any subsisting points of concern and issues that might emerge on further consideration before its implementation. The Working Party engaged in extensive discussions and exchange of correspondence with the Administration on the post-enactment review. It held 10 intensive meetings this year and met with representatives of the Administration to discuss issues arising from the Government's post-enactment review; considered section-by-section the 2nd Working Draft of the *Land Titles (Amendment) Bill* and the comments of other stakeholders. The Working Party expected the Land Registry to provide a finalized draft of the "*Amendment Bill*" for further consultation with a view to gazettal shortly thereafter. However, the Land Registrar unexpectedly and without prior notice raised 2 substantive issues in July on: (1) conversion mechanism; and (2) rectification and indemnity provisions. He indicated these issues needed to be settled before the Administration could finalize the draft Amendment Bill. The Working Party has expressed grave concerns that after 20 years of deliberations and with submissions made on no less than 40 occasions, the Administration introduced fundamental changes at such a late stage. Members carefully reviewed the Administration's new proposals but did not think it has made out a case for such drastic changes to the conversion mechanism embodied in the 2004 legislation. The Working Party also submitted its views on the proposed rectification and indemnity arrangements. A longstanding member resigned in August.

External Work:

The Working Party has representatives on the following external committees:

- The Land Titles Ordinance Steering Committee
- The Land Titles Ordinance Review Committee
- Title Registration Education Committee

Members of the Working Party

Andy O.T. NGAN (*Chairman*)

Peter P. AHERNE

E. John DAVISON

Emily LAM

LEUNG Siu Hon (resigned in August)

Vincent W.S. LIANG

Judith SIHOMBING

Paul K.H. YU

Secretary: Assistant Director, Practitioners Affairs

SUBGROUP ON LTO FORMS

The Subgroup was established in January to review and recommend to the Working Party on Land Titles Ordinance the submissions to be made on the forms to be used on implementation of the title registration legislation. The Subgroup met once but suspended its work pending finalization by the Land Registrar of the policy regarding 2 substantive outstanding issues on the legislation, namely, (1) conversion mechanism; and (2) rectification and indemnity provisions.

Standing Committee on Practitioners Affairs

Members of the Subgroup

Andy O.T. NGAN (*Chairman*)

E. John DAVISON

Lilian HO

David IP

LEUNG Siu Hon (resigned in August 2008)

Alexander LEUNG

Fanny MAK

Chris PANG

Melissa PANG

Anthony SHIN

Judith SIHOMBING

Doris TING

Secretary: Assistant Director, Practitioners Affairs

WORKING PARTY ON REVISED DMC GUIDELINES

The Working Party continued its review on The Law Society's DMC Guidelines in view of the changes introduced by *the Building Management (Amendment) Ordinance 2007*. It was noted that the Lands Department has embarked on a similar review on the Consent Scheme DMC Guidelines and to avoid duplication of effort, the Working Party resolved to highlight areas in the Guidelines requiring revisions to the attention of the Lands Department.

Members of the Working Party

LEUNG Siu Hon (*Chairman*)

Patrick K.H. LAM

MA Ho Fai

David P.H. WONG

Terry P.L. YEUNG

Secretary: Assistant Director, Practitioners Affairs

RETIREMENT SCHEMES COMMITTEE

The Committee reviewed and made comments on the following:-

- *Mandatory Provident Fund Schemes (Amendment)(No.2) Bill 2007*
- Revised MPF Guidelines on:-
 - Investment Managers
 - Index-Tracking Collective Investment Schemes
 - Enrolment and Contribution Arrangements for Relevant Employees other than Casual Employees
 - Enrolment and Contribution Arrangements for Casual Employees
 - Enrolment and Contribution Arrangements for Self-employed Persons
 - Remittance Statement
 - Unclaimed Benefits

Standing Committee on Practitioners Affairs

Members of the Committee:

Duncan A.W. ABATE (*Chairman*)

David G. ADAMS

Cynthia W.S. CHUNG

Angus H. FORSYTH

Christine M. KOO

Ines C.Y. Wei

Judy YANG

Secretary: Director of Practitioners Affairs

REVENUE LAW COMMITTEE

The Committee met twice and reviewed documentation via email. Two members resigned and one new member was co-opted.

Liberalisation of Exchange of Information (“EoI”) Article for Comprehensive Double Taxation Agreements (“DTAs”)

The Committee considered a Consultation Paper published by the Financial Services and Treasury Bureau (“FSTB”) on the potential liberalization of EoI Article in Hong Kong’s DTAs. A meeting was held with representatives of the Organisation for Economic Co-operation and Development on 11 September and submissions were sent to the FSTB on 16 September. The Committee indicated the Government, when concluding any DTA incorporating the 2004 EoI, should obtain undertakings from the other side that:

- Requests under the 2004 EoI will be limited to tax information only
- Information received from Hong Kong under the 2004 EoI will not be divulged to third parties

As a quid pro quo for agreeing the incorporation of the 2004 EoI in any DTAs, Hong Kong must be removed from any fiscal disability or “blacklist” maintained by the other side. Hong Kong should avoid entering into standalone EoI agreements and the 2004 EoI should be used as a lever to obtain concessions, in the form of a DTA, from the other side.

Joint Liaison Committee on Taxation

Representatives attended seven JLCT meetings during the year.

Members of the Committee:

William A. THOMSON (*Chairman*)

James J. BERTRAM

Eric C.H. CHIU (*resigned in July*)

Philson W.H. HO (*resigned in July*)

Vincent P.C. KWAN

William C.W. LAM

(*co-opted as new member in October*)

Simon J.G. RAE

Anthony C.K. SO

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

REVIEW OF PROPOSED LEGISLATION COMMITTEE

The Committee conducted its business by email and dealt with the following matters:-

- *Trade Descriptions (Amendment) Bill 2007*

Members of the Committee:

Neville J.J. WATKINS (*Chairman*)

Isabella W.H. CHAN

David T.W. LAM

Raymond C.Y. LEE

Secretary: Director of Practitioners Affairs

SECURITIES LAW COMMITTEE

The Committee reviewed and made comments on the following:-

- *Consultation Streamlining Pre-vetting of Notices and Advertisements*
- *Consultation Paper on Proposed Changes to the Listings Rules*
- *Consultation Paper on the Issue of Paper Application Forms*
- *Consultation Paper on Share Capital, the Capital Maintenance Regime and Statutory Amalgamation Procedure*
- *Toolkit on Directors' Ethics*

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 (resigned in April)

David P.R. STANNARD

Dominic W.L. TSUN

Dieter L.T. YIH

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

WORKING PARTY ON ARBITRATION LAW

The Council convened a working party to review the Department of Justice's Consultation Paper "*Reform of the Law of Arbitration in Hong Kong and Draft Arbitration Bill*". Members met on three occasions and prepared The Law Society's submissions which were sent to the DOJ on 25 June.

Members of the Committee:

James E. JAMISON (*Chairman*)

Jeffrey H. LANE

Mark LIN

Amirali B. NASIR

Mary B.L. THOMSON

Kenneth W.Y. WONG

Secretary: Director of Practitioners Affairs

WORKING PARTY ON CJR ("WP")

The Working Party held a joint meeting with the Civil Litigation Committee in February 2008 to review the subsidiary legislation to implement the CJR. The WP agreed that its role in relation to CJR was effectively *functus* on policy issues and also noted it was not The Law Society's role to audit the proposed amendments to the subsidiary legislation it being the responsibility of the Judiciary and the Law Drafting Division to pick up errors. Members also assisted with the review of the Judiciary's draft Practice Directions in September and provided commentary on the initial consultation.

Members of the Working Party on CJR:

Andrew JEFFRIES (*Chairman*) (resigned in April)

D. Nigel FRANCIS

Warren P. GANESH

Barry P. HOY

Nicholas D. HUNSWORTH

James E. JAMISON

Jeffrey H. LANE

Allan C.Y. LEUNG

Mary B.L. THOMSON

Neville J.J. WATKINS

Kenneth W.Y. WONG

Secretary: Director of Practitioners Affairs

WORKING PARTY ON COMPETITION LAW

This Working Party was convened by Standing Committee on Practitioners Affairs in October 2006 to assist the Council to review and prepare submissions on the Government's competition policy and to advise on the impact of competition legislation on the Law Society and solicitors' practices.

Standing Committee on Practitioners Affairs

In May, the Commerce and Economic Development Bureau published its Consultation Paper “*Detailed Proposals for a Competition Law*” and sought submissions on 48 questions. Members provided extensive commentary on such topics as: horizontal and vertical agreements; whether there should be a general prohibition on an undertaking with a substantial degree of market power; merger control proposals; civil or criminal penalties; whether the court or a tribunal should deal with competition matters; and exclusion of the Government from the legislation. The Council approved the submissions which were sent to the Bureau on 11 July.

Members of the Working Party:

Simon H. BERRY (*Chairman*)

NG Kin Yuen

Simon D. POWELL

Thomas S.T. SO

Henry J.H. WHEARE

David P.H. WONG

(co-opted as new member in September)

Kevin K.F. YAM

Secretary: Director of Practitioners Affairs

WORKING PARTY ON HIGHER RIGHTS OF AUDIENCE (“HRA”)

The Working Party met four times and conducted the rest of its business via email.

The Chief Justice’s Working Party on Solicitors’ Rights of Audience published its Final Report in October 2007 recommending the extension of solicitors’ existing rights of audience to the High Court, Court of Appeal and Court of Final Appeal. The Report suggested the Society should draft a Code of Conduct for persons with such extended rights of audience - to be known as “Solicitor Advocates” - in consultation with the Judiciary and the Bar Association.

Draft *Legal Practitioners (Amendment) Bill 2009*

In July, the Law Drafting Division of the DOJ provided a draft Bill to amend the *Legal Practitioners Ordinance* which was reviewed by the Working Party together with the Division’s notes on the draft *Solicitors (Higher Courts’ Qualification) Rules*; comments were sent to the DOJ in late September. At a meeting of the AJLS on 16 December, attended by the President, the Chairman and Secretary of the Working Party, the Government confirmed its intention to introduce the Bill by June 2009. At the time of printing, a central issue which may pre-occupy the debates to come may well be the number of practitioners who will be seeking higher rights of audience in the foreseeable future. At the request of the Working Party, The Law Society circulated a survey to gauge approximate numbers for the Administration.

Standing Committee on Practitioners Affairs

Code of Conduct

In preparing a draft Code, the Working Party decided to use as a model the English *Code of Conduct for Solicitor Advocates* and obtained permission from the Law Society of England and Wales to do so. In June, the Council endorsed the draft Code which was sent to the Chief Justice and the Chairman of the Bar Association. The DOJ has adopted the position that the Code should be a matter for discussion in LegCo, but has indicated the Code will not be dealt with until the primary legislation has been introduced.

Members of the Working Party:

Peter H. C. BARNES (*Chairman*)

Melville T.C. BOASE

Christopher P. ERVING

Stephen W.S. HUNG

Nicholas D. HUNSWORTH

Andrew JEFFRIES (resigned in April)

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 RECOVERY AGENTS (“WP”)

The WP met twice during the year and conducted the rest of its business by email:-

The Chairman attended the AJLS meeting on 19 March when the DOJ reported the police were investigating nine cases involving alleged recovery agents, seven of which were actively being pursued. Our representatives raised question on public education and highlighted the need to broadcast adverts on TV and other media outlets on the illegality of recovery agents. DOJ should also consider introducing legislation confirming champertous arrangements are illegal as stated in the CFA Judgment *Siegfried Adalbert Unruh v Hans-Joerg Seeberger and Another* [FACV9&10/2006]. In early July, the media reported on the arrest of several people, including a solicitor in relation to suspected activities by recovery agents. DOJ arranged for APIs to be broadcast on the illegal activities of recovery agents in order to maximize publicity given the high profile arrests on 3 July.

Members noted the problem of recovery agents requires co-operation with the following stakeholders: Legal Aid Department, Labour Department, Hospital Authority, Social Welfare Department, and suggested the launch of a publicity campaign to educate the public on the illegal activities of recovery agents.

The Chairman wrote several articles and responded to letters in the local press to counter erroneous impressions by the public that recovery agents are acting on a contingency fee basis and emphasised these people take a significant percentage of the settlement.

Standing Committee on Practitioners Affairs

Members of the Committee:

Ludwig S.W. NG (*Chairman*)

Patrick M. BURKE

Szwina S.K. PANG

Tommy K.M. WONG

Secretary: Director of Practitioners Affairs

WORKING PARTY ON REGISTERED FOREIGN LAWYERS (WP)

The Law Society was invited by the Court to appoint an *amicus curiae* and make submissions in relation to the recoverability or otherwise of the legal fees of a registered foreign lawyer working as a member of a legal team involved in litigation before the court. The Council convened the WP at the end of December 2007. The WP met in January and considered the application of Rule 12 of the *Foreign Lawyers Registration Rules*. An *amicus* attended a hearing on 14 May and judgment in the case of *Heather Anne Voce and The Henley Group Ltd* HCA 1370/2006 was handed down on 29 August.

Members of the Committee:

James E. JAMISON (*Chairman*)

Joseph C.W. LI

Angela M.Y. LI

Amirali B. NASIR

Thomas S.C. SO

WONG Kwai Huen

Secretary: Director of Practitioners Affairs

Standing Committee on Practitioners Affairs

HONG KONG SOLICITORS INDEMNITY FUND LIMITED

Hong Kong Solicitors Indemnity Fund Limited (“Company”) was established by The Law Society and empowered by the *Solicitors (Professional Indemnity) Rules* (“*the Rules*”) Cap.159M to manage and administer the Professional Indemnity Scheme (“the Scheme”) and the Solicitors Indemnity Fund (“the Fund”) subject to direction in certain areas by the Council.

The Company held a total of nine Board meetings during the year and an Annual General Meeting.

The Company considered a number of matters including:

- Issues in relation to the conduct of claims
- The performance of the Scheme’s Broker and Manager
- The performance of the Scheme’s investment managers and the Scheme’s investments
- U.S. withholding tax
- Proposed amendments to the Rules
- The monthly management accounts and the audited accounts of the Fund and the Company
- Renewal of Directors’ and Officers’ liability and Professional Indemnity insurance for the Company and the Directors
- Insolvency Cover
- Renewal of reinsurance of the Scheme
- The database system for storing claims statistics and information
- Matters arising from the liquidation of HIH Casualty and General Insurance Ltd. (“HIH”) and FAI General Insurance Company Ltd. (“FAI Australia”) and the provisional liquidation of FAI First Pacific Insurance Co. Ltd. including the dispute with the Liquidators on the outstanding liabilities owed by HIH and FAI Australia, the dividends payable to the Company, and other matters arising from the creditors’ committees and committees of inspection
- Enquiries by member firms relating to the Scheme

A total of 306 notifications of claims were received by the Claims Manager, ESSAR Insurance Services Ltd. (“ESSAR”) during the 2007/2008 indemnity year, i.e. from 1 October 2007 to 30 September 2008 and the grace period from 1 October 2008 to 29 November 2008. As at 30 September 2008, 14 of the notifications resulted in proceedings, 2 were settled with payment, 5 were closed without payment and 285 remained as notifications.

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The number of claims for the last 22 indemnity years and the number of members as at 30 September 2008 of each of those 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	215	-7%	5,086
2002/03	268	25%	5,191
2003/04	158	-41%	5,317
2004/05	145	-8%	5,498
2005/06	166	14%	5,666
2006/07	140	-16%	5,831
2007/08	306	119%	6,092

* *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 2007/2008 indemnity year are categorized as follows:-

Company/Commercial	22
Conveyancing	218
Litigation	41
Miscellaneous	10
Patents and Trademarks	8
Probate	7
Total	306

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Notifications are also categorized into negligence or fraud claims. After investigation, 2 of the 306 notifications for the 2007/08 indemnity year were classified as fraud claims.

As at 30 September 2008, the total liability of the Scheme for the 2007/2008 indemnity year calculated on the basis of claims paid and claims reserved was HK\$28,867,519 of which HK\$2,797,275 consisted of claims paid (including costs) and HK\$26,070,244 consisted of claims reserved.

The total amount of claims paid (including costs) since the inception of the self-insured Scheme in 1986 amounted to HK\$1,344,442,349 and the total amount reserved was HK\$478,812,203.

A detailed account of the operation of the Scheme and claims data as well as the audited accounts of the Fund as at 30 September 2008 will be published in the Scheme's Annual Report for the 2007/2008 indemnity year.

Directors of the Company:

Peter R. GRIFFITHS (*Chairman*)

Albert B.K. DAN

Christopher G. HOWSE

James E. JAMISON

(resigned with effect from 1 January 2009)

Peter C.L. LO

Patrick R. MOSS (appointed in February)

Amirali B. NASIR

Ludwig S.W. NG

Wai Yan NG

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 held 7 meetings to discuss both new and on-going claims.

Members of the Committee:

James E. Jamison (*Chairman*)

Colin B. COHEN (*Vice-Chairman*)

Charles W. ALLEN

Keith M. BRANDT

Tony K.W. CHOW

David C. CHU (resigned in November)

Ronald W.T. TONG

Secretary: ESSAR

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PIS INVESTMENT SUBCOMMITTEE

The PIS Investment Sub-committee met quarterly.

At each meeting the Sub-committee would 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.

In 2008, the MSCI World Index, representing developed world stock markets, declined 41% and suffered its worst year since its inception in 1970. Emerging markets fell by more than 50%. The year was plagued by massive sell-offs that pushed market volatility to historic highs and shook investors' confidence.

Under these difficult economic conditions, the portfolio managed by AllianceBernstein and Credit Agricole provided a return of -19.22% and -9.65% respectively each for the 12 month period ended 31 December 2008.

Members of the Subcommittee:

Peter C.L. LO (*Chairman*)

John S. GALE

IP Shing Hing

Ludwig S.W. NG

Kevin C.K. SHUM

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 held one meeting during the year and considered proposed amendments to the *Solicitor Corporations Rules* and consequential amendments to the *Solicitors (Professional Indemnity) Rules*.

Standing Committee on Practitioners Affairs

Members of the Committee:

Robin S. PEARD (*Chairman*)

Kevin R. BOWERS

Steven J. DEWHURST (resigned in November 2008)

Lawrence Y.H. LEE

(Aon Holdings Hong Kong Limited)

Susan P.S.K. LIANG

Wai Yan NG

Peter K.H. NGAI

David G. SMYTH

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 resolve all matters relating to the tender for appointment as Panel Solicitors, to consider the tender applications and to make recommendations to the Council on the appropriate firms to be appointed to the Panel.

The firms which served as Panel Solicitors in 2008 were:

Baker & McKenzie

Barlow Lyde & Gilbert

Deacons

Fred Kan & Co.

Herbert Smith

P.C. Woo & Co.

Richards Butler

Wilkinson & Grist

Members of the Board:

WONG Kwai Huen (*Chairman*)

Stephen W.S. HUNG

Kenneth S.Y. NG

Thomas S.T. SO

Secretary: Assistant Director, Professional Indemnity Scheme

Standing Committee on Practitioners Affairs

PIS REVIEW WORKING PARTY

The terms of reference of the Working Party are to review the structure and operation of the Professional Indemnity Scheme (“the Scheme”); to invite and consider the views of members; and to make recommendations to the Council in connection therewith.

Continuing on with the work in the previous year the Working Party considered the following issues:

- Claims loadings
- The advantages and disadvantages of the master policy scheme (“MPS”)
- The feasibility of the MPS in Hong Kong
- The present contribution formula
- The costs of the MPS compared with the costs of the Scheme to law firms

On the recommendation of the Working Party the Council resolved to seek expert advice on these issues.

The Working Party submitted an interim progress report to the Panel on Administration of Justice and Legal Services of the Legislative Council in April 2008. Final recommendations will be made after considering the expert advice being sought.

It will continue to meet and review the Scheme.

Members of the Working Party:

Peter C.L. LO (*Chairman*)

Peter R. GRIFFITHS

Raymond C.K. HO

Christopher G. HOWSE

Nicholas D. HUNSWORTH

Sundaramoorthy KRISHNAN

Kenneth S.Y. NG

Benny Y.B. YEUNG

Secretary: Assistant Director, Professional Indemnity Scheme

Standing Committee on Practitioners Affairs

WORKING PARTY ON PIS GROSS FEE INCOME REPORTS 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 failed, in breach of the Rules, to submit the application for insurance and/or the gross fee income report on or before 15 August, or pay their annual contributions on or before 30 September in each year. The Working Party is also responsible for approving the applications for an extension of time to submit the application for insurance and/or the gross fee income report.

Members of the Working Party:

IP Shing Hing (*Chairman*)

Albert B.K. DAN

Wai Yan NG

WONG Kwai Huen

Secretary: Assistant Director, Professional Indemnity Scheme



Practitioners Affairs Department