

## **Report of the Special Committee on Personal Injuries**

1. It has been an extremely busy and, I dare say, productive year.
2. The Special Committee started off with the task of reviewing the Civil Justice (Miscellaneous Amendments) Ordinance (Ord. No. 3 of 2008) (“CJR”), which was passed on 5<sup>th</sup> February 2008, in order to prepare for the consequential amendments affecting PI Practice that were to be made to the Rules of the High Court and District Court.
3. A joint meeting was held between the Special Committee and the Law Society on 27<sup>th</sup> February 2008 to discuss various issues, including the approach to be adopted in revising the PI Practice Direction, the role of mediation in future PI practice and its likely consequences, and the role of the PI Judge and the PI Masters in the High Court and District Court.
4. A meeting was held on 31<sup>st</sup> March 2008 with Mr. Norris Yang, a solicitor and qualified mediator, who briefed members on mediation practices and on the avenues available to qualify as a mediator. During the meeting, members also reviewed the provisions of the CJR which were relevant to PI Practice.
5. Upon being notified in late April 2008 of the appointment of Mr. Justice Barnabas Fung as the new PI Judge, a meeting was held among members on 19<sup>th</sup> May 2008 to discuss the issues that should be brought to the Judge’s attention. Also discussed during this meeting was the issue of the taxation of costs in Legal Aid cases and the amendments to the PI Practice Direction that might be required by virtue of the provisions the new CJR, in particular, the revision of the directions in connection with medical experts and the introduction of new directions to deal with sanctioned offers and statements of truth.
6. The Committee met with Mr. Justice Fung on 22<sup>nd</sup> May 2008 during which various issues were raised and discussed, including (i) recovery agents; (ii) the possible enlargement of the scope of Supplemental Legal Aid Scheme under the Legal Aid Ordinance; (iii) mediation; (iv) the revision of the current PI Practice Direction on an incremental basis to align it with the new CJR; (v) the necessity of PTR hearings; and (vi) the formation of a working party with the Law Society and Legal Aid Department to work on the revision of the PI Practice Direction.
7. Since then, regular meetings had been held among members to discuss the intended amendments to be made to the PI Practice Direction. A joint meeting was held with the Law Society on 23<sup>rd</sup> June 2008 and written correspondence followed that meeting. Members worked closely with the Law Society on the revision exercise during the months of June/July 2008. A draft PI Practice Direction was received from the Judiciary in about mid August 2008. This tracked many of the proposals that had been made by members of our Committee. Other proposals emanating from the Judiciary required a review by our members and this was done at a meeting held on 1<sup>st</sup> September 2008.

8. Another very productive meeting was held with Mr. Justice Fung on 8<sup>th</sup> September 2008 and H. H. Judge Marlene Ng joined us on this occasion. There was a very frank exchange and a realistic acknowledgement that the day when a direction for single joint expert would be the norm was still distant. The suggestion was made that mediation might first be introduced and tried in Employees' Compensation Cases before extending mediation to common law claims in the District Court and, finally, to High Court cases.
9. Following the discussion, submissions on the proposed new PI Practice Direction were drafted and discussed among members before the same was submitted, through the Bar Association, to the Judiciary on 29<sup>th</sup> September 2008.
10. While the work of drafting the new PI Practice Direction is almost complete, members anticipate that there will be additional issues and areas that must be looked into in order to ensure a smooth transition from the present practice to the new era.
11. Apart from the email/telephones exchanges made among members and with our colleagues from the Law Society, and our meetings with the Law Society, we met on 8 occasions on the following dates to discuss issues affecting PI practice:
  - (1) 26<sup>th</sup> February 2008;
  - (2) 31<sup>st</sup> March 2008;
  - (3) 19<sup>th</sup> May 2008;
  - (4) 22<sup>nd</sup> May 2008 (with Mr. Justice Fung);
  - (5) 30<sup>th</sup> June 2008;
  - (6) 1<sup>st</sup> September 2008;
  - (7) 8<sup>th</sup> September 2008 (with Mr. Justice Fung and HH Judge Ng);
  - (8) 25<sup>th</sup> September 2008.
12. A vote of thanks must go to my whole Committee for their valuable contributions throughout the year. A special vote of thanks must go to Raymond Leung who took on the burden of producing the initial redraft of the Practice Direction and the multiple revisions that were effected to it. Whilst every member contributed, Raymond is clearly the principal architect of these revisions.
13. I must also thank Julia Lau for recording minutes of our meetings and for producing the first draft of this report.

Mohan Bharwaney, SC  
Chairman  
Special Committee on Special Injuries

10 December 2008