

Report on Committee on Personal Injuries 2017

This year the Committee continued to focus its effort on the possible reform of the Employees Compensation Assistance Fund Scheme (ECAAF Scheme), Legal Aid and Practice Direction for medical negligence cases.

On 12th January 2017, the Court of Appeal in *Lo Siu Wa v Employees Compensation Assistance Fund Board* [2017] 2 HKLRD 9 (CA) held that the coverage of an employees' insurance policy is determined by the policy schedule containing specified type(s) of workers. On 6th July 2017, the Court of Appeal granted leave to appeal to the Court of Final Appeal on the ground of great, general and public importance. The Committee discussed the impact of the decision on uninsured employees and the availability of any interim remedies. The Committee will continue to keep a close eye on the development of this area in view of the implication in the area of employees' compensation, particularly in respect of the requirement of compulsory insurance to be effected by employers.

The Committee also discussed the practice of assigning lawyers by the Department of Legal Aid. In the "*Measures to prevent the misuse of the legal aid system in Hong Kong and assignment of lawyers in legal aid cases*" (LC Paper No. CB(4)1386/16-17(03)) dated 18th July 2017, the LegCo Panel on Administration of Justice and Legal Services recorded that as a general policy a counsel who had earlier given a favourable section 9 opinion would not be assigned to handle the case if legal aid was subsequently granted. The Committee examined the feasibility of the policy and will liaise with the Department of Legal Aid to discuss the matter.

The Committee further considered the need for written guidance on the engagement of experts and detailed practice direction for medical negligence cases. In the United Kingdom, there is a "*Pre-Action Protocol for the Resolution of Clinical Disputes*" separate to "*Pre-Action Protocol for Personal Injury Claims*". Given the growing number of medical negligence cases and their complexities, the Committee will continue to analyse the need for a separate practice direction.

Committee welcomes Edward Poon and Theresa Low as the two new committee members. It remains for me as Chairman to thank each and every member of the Committee for their good work and staunch support in the past year. They include Ruy Barretto SC (Vice Chairman), Nicholas Pirie (Secretary), Ashok Sakhrani, Christina Lee, Julia Lau, Kamlesh Sadhwani and Eric Tsoi.

The Chairman has been professionally engaged in a long case during the past 10 months. Mr. Nicholas Pirie has stepped in to pull extra weight on the work of the Committee, particularly, in conjunction with the Committee on Legal Aid under the Chairmanship of Mr. Ruy Barretto SC, on topics of common interest.

A special vote of thanks must be given to Corinne Remedios, who had given notice of resignation to the Committee early this year. The Committee expressed their gratitude and appreciation to the hard work and support given by Corinne Remedios throughout her time as committee member.

Raymond Leung SC
Chairman
Committee on Personal Injuries

20 December 2017