

LegCo Panel - AJLS
Meeting - 14.3.02

**Civil Justice Reform: Chief Justice's Working
Party Interim Report and Consultative Paper**

A Personal Perspective/Summary

1. Warren P Ganesh – credentials:

- Lawyer E&W/HK(SAR) practising 1990-98
- Non-practising 1999-2002+
- Former Lecturer (civil procedure/evidence)
- Personal reflection

2. Civil Justice Reform:

- (i) "Necessary" - Why?
 - Complexity ?
 - Cost ?
 - Delay ?
- (ii) How ?
 - wholesale reform (Proposal 74); or
 - amendment (Proposal 75) – "cherry pick";
 - (diluted reform - customised to HK ?)
- (iii) When ?
 - "a long process" (started Feb. 2000)
 - 1994-99 E&W
 - depend on nature of reform
 - concern reform done on cheap/too quickly ?
 - (English experience)

3. What CPR arguably got right in E&W included ?

- NB. Anecdotal
- (i) Shift in "litigation pendulum": Defendants to Plaintiffs
- (ii) Overriding Objective: "an all-embracing civil procedure Mission Statement" for Lawyers/Courts Users/Civil Judges
- (iii) *Mandatory* Case Management – Crucial
 - Fast-track/Standard Directions/Control of Evidence
 - [Multi-track]
- (iv) Dispute Resolution
 - Alternative Dispute Resolution
 - Mandatory Specialist Pre-action Protocols (General PAP to follow)

- Claimant's Offers (but went too far?)
- (v) Statements of Case – simpler

4. What CPR arguably did not get right in E&W ?

- (i) Complexity
 - Updates/Courts Guides
- (ii) Costs Front-Loaded
- (iii) Delay in complex cases
 - was wholesale reform necessary on these three criteria (4(i)-(iii))?
- (v) Judicial inconsistency in larger Multi-track cases
- (vi) Summary Costs Assessment in Fast-track
 - a real concern/back fired
- (vii) Court control on Expert evidence escalated solicitor/party costs in complex case
 - use of non-court approved experts
- (viii) Procedural reform encroached on substantive common law and ultra vires
 - e.g. wasted costs orders provision
 - e.g. parties privileged correspondence to experts ?

5. Some specific concerns to HK:

- (i) Proposals to curtail Appeals from CFI to CA
 - leave
 - threshold for leave
- (ii) Litigants in Person
- (iii) HK smaller/niche legal market
 - vital to get it right
 - foreign investment
 - HK's International reputation for dispute resolution forums

6. Issues crucial to better access to *procedural* justice:

- (i) Conditional Fees for Party's costs
- (ii) After the Event Insurance for inter party's costs
- (iii) Solicitors' *Higher* Rights of Audience

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