



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

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立法會秘書處 法律事務部
LEGISLATIVE COUNCIL SECRETARIAT
LEGAL SERVICE DIVISION

來函編號 REFERENCE : LS/B/15/06-07

來函檔號 SUBJECT :

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圖文傳真 FACSIMILE :

Miss Emma Lau
Judiciary Administrator
Judiciary
G/F, High Court Building
38 Queensway
Hong Kong

By Fax (2530 2648) and By Post

12 June 2007

Dear Miss Lau,

Civil Justice (Miscellaneous Amendments) Bill 2007

I enclose herewith some questions on Part 5 of the Bill and would be grateful if you could let me have your reply in bilingual form at your earliest convenience.

Yours sincerely,

Kitty Cheng
Assistant Legal Adviser

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cc. LA
CCS(2)3

Enclosure**Civil Justice (Miscellaneous Amendments) Bill 2007*****Part 5 Vexatious litigants***

1. Clause 13 of the Bill seeks to provide that CFI may on the application of the Secretary for Justice or an affected person order that no legal proceedings shall be instituted or continued by an person who has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings whether against the same person or against different persons.

2. Part 5 of the Bill adopts Recommendations 67 and 68 made in the Final Report. The provisions are modelled on section 42 of the Supreme Court Act 1981 of the UK ("section 42 of the UK Act"), however, the Bill represents an extension of section 42 of the UK Act since under that provision only the Attorney General may apply for an order against the vexatious litigants.

3. Please provide more information to the Bills Committee about the legislation on prevention of vexatious litigation in other common law jurisdictions (such as the federal court and various states / provinces of Canada, Australia, New Zealand, the United States and India), in particular –

- (a) whether in addition to the law officer (e.g. Secretary for Justice, Attorney General, Law Officer, etc), a party and/or non-party to the proceedings may apply for an order to restrain a vexatious litigant from instituting or continuing proceedings;
- (b) whether the term "vexatious proceedings / litigants" is defined in their law; and
- (c) whether application may be made against a litigant if the litigant has issued the proceedings with the benefit of legal advice by a qualified legal practitioner.

4. Please provide copy of the relevant overseas legislation for the easy reference of the Bills Committee.

5. The object of Part 5 of the Bill is to screen out vexatious litigation, thereby to enable fairer distribution of the court's resources for genuine disputes (para. 13 of the LegCo Brief (ref CSO/ADM CR 4/3221/04). Since any party to the proceedings or any person who alleges that he has directly suffered adverse consequences resulting from such proceedings may apply for an order under the proposed section 27 of the High Court Ordinance (Cap. 4), is there any safeguard to prevent unmeritorious applications under the proposed section 27, which may cause complications or delay in rightful proceedings?