CJRB 7/2007

Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007

Response to Issues Raised by the Bills Committee

Purpose

This paper sets out the response from the Administration/Judiciary Administration to the issues raised by the Bills Committee at the meetings on 21.6.2007 and 6.7.2007. It must be emphasised that where views on the law are expressed herein, such views are not to be taken as statements of law by the courts. Judicial determinations or statements of law may only be made in actual cases that come before the courts after hearing argument.

Part 4 – Interim Relief and Mareva Injunctions in Aid of Proceedings outside Hong Kong

A. The Administration to confirm whether this part will apply to enforcement of Mainland judgments in civil or commercial matters in HK after the enactment of this Bill and the Mainland Judgments (Reciprocal Enforcement) Bill.

2. The new section 21M(1) of the High Court Ordinance ("HCO") (Cap. 4) proposed under Clause 10 of the CJR Bill is generally concerned with all proceedings outside Hong Kong (and not limited to those in the Mainland) which judgments may be enforced in Hong Kong under any Ordinance or at common law. After the enactment of this Bill, the proposed new section 21M(1) of HCO will also apply to cases in the Mainland the enforcement of which in Hong Kong is covered under the terms of the Mainland Judgment (Reciprocal Enforcement) Bill.

Part 5 – Vexatious Litigants

B. The Judiciary Administration/Administration to provide examples to illustrate the meaning of "*affected person*" under the proposed section 27(5)(b).

3. Under the proposed section 27(5)(b), "*affected person*" means a person who "*has directly suffered adverse consequences resulting from such proceedings*". Examples of such persons may include (i) persons served with orders or (ii) beneficiaries to an estate, who are not parties to the vexatious litigation, but nevertheless are adversely affected. For instance, (i) persons served with orders in a vexatious litigation may have to incur costs and time to respond to such orders; and (ii) beneficiaries may not be able to get their entitlement to an estate until the vexatious litigation is over.

C. The Judiciary Administration/Administration to provide information on case law relating to definition of "*affected person*" in other common law jurisdictions.

4. Research has been conducted on legislation on vexatious proceedings in other common law jurisdictions (see Bills Committee Paper Ref. **CJRB 6/2007**). It is noted that in seven States / Territories of Australia, persons other than the Law Officer and the Registrar may apply to the Court for a vexatious litigant order. The term used to refer to such persons is not "affected person" and varies from one State/Territory to another. Nevertheless, the following may be of relevance –

State / Territory of Australia	Terminologies Used
New South Wales	"person aggrieved", not defined but intended to refer to any person against whom vexatious legal proceedings have been instituted
Queensland	- a person against whom another person has instituted or conducted a vexatious proceeding; - a person who has a sufficient interest in the matter
Western Australia	- a person against whom another person has instituted or conducted vexatious proceedings; or - a person who has a sufficient interest in the matter.

State / Territory of Australia	Terminologies Used
Northern Territory	- anyone against whom, in the Court's opinion, the person has instituted or conducted vexatious proceedings; - anyone who, in the Court's opinion, has a sufficient interest in the matter.
South Australia	"other interested person", not defined.
Tasmania	any person who, in the opinion of the Court or a judge, has a sufficient interest in the matter
Australian Capital Territory	"aggrieved person" defined to mean "in relation to proceedings, means a person aggrieved by the institution of those proceedings".

5. We do not have information on the relevant case law relating to the above terminologies.

D. The Judiciary Administration/Administration to provide information on the meaning of "*vexatious legal proceedings*" in the proposed section 27(2)(a), with case law where appropriate.

6. The term "vexatious legal proceedings" ("無理纏擾的訴訟") is not statutorily defined in HCO. Nevertheless, the meaning of the term can be found in the relevant case law. Examples of such activities have been noted by the CFA in *Ng Yat Chi v. Max Share Limited*, FACV 5/2004, 20/1/05 (per CJ at para. 2; per Ribeiro PJ in paras. 48-50) and by the CFI in *Secretary for Justice v. Ma Kwai Chun*, HCMP 1471/2005, 16/12/05 (per Lam J at paras. 37-40). In short, all vexatious proceedings amount to an abuse of the court's process. In the context of section 27 of HCO, the expression "vexatious" describes the nature of the proceedings which the section is aimed to target, whilst the expression "habitually and persistently and without any reasonable ground" describes the manner in which such proceedings are instituted. "Habitually and persistently" involves an element of repetition: per Lam J. in *Ma Kwai Chun* at paras. 33-34). These expressions, when read together, define the circumstances when the court will exercise its jurisdiction under that section.

7. Substantial case law has been developed both in England and in Hong Kong on the meaning of "vexatious legal proceedings". To borrow the words from Lam J, that "[g-]iven the infinite wisdom of a litigant, there is always scope for new forms of vexatious proceedings." Hence, it is best to allow the case law to continue developing by building on, as far as possible, the present formulation.

E. The Judiciary Administration/Administration to consider changing the conjunctive phrase "habitually and persistently" in the proposed section 27(2)(a) to a disjunctive phrase "habitually or persistently".

8. The reference to "habitually and persistently" is the existing threshold of section 27 of HCO. We have no intention to change this threshold. Also, we have not received any comments during consultation as regards the need to change the existing threshold for a vexatious litigant order under section 27 of HCO. The suggestion to change the conjunctive phrase "habitually and persistently" in the proposed section 27(2)(a) to a disjunctive phrase "habitually or persistently" would lower the threshold of a vexatious litigant order, which we consider should only be used sparingly in extreme cases. Our section 27 is based on section 51 of the Supreme Court Judicature (Consolidation) Act 1925 in England and Wales, which has since been replaced by section 42 of the Supreme Court Act 1981. Given its origin, our courts have been able to make reference to judgments in other common law jurisdictions, which share the common origin and similar wording in construing our section 27. See the judgment of Lam J in *Ma Kwai Chun* at paras. 33-34. We do not consider it appropriate to make any change to the existing formulation, which has been well tested with a wealth of common law case law to refer to.

F. The Judiciary Administration/Administration to review the Chinese rendition for "habitually and persistently", as the Chinese terms "慣常" and "經常" had the same meaning and "經常" failed to convey the meaning of "persistently".

9. According to the *Strouds Judicial Dictionary of Words and Phrases* (7th edition) and the *Words and Phrases Legally Defined* (3rd edition), the word "persistently" connotes a degree of repetition. The reference does not mention any mental element. The relevant pages are

attached at **Annex A**. The Chinese rendition "經常" was authenticated by LegCo in 1997 and it accurately reflects the then legislative intention. **Annex A**

10. Basically, "persistently" does not require any mental element. This is in line with case law as most recently set out in the judgment of Lam J in SJ v. *Ma Kwai Chun* [2006] 1 HKLRD 539:

> "33. The expression 'habitually and persistently' involves an element of repetition. Although it needs not be over a long period of time, it is essential to establish a course of repetitious abusive conducts in the whole history of the defendant's litigious activities. ..."

11. If the use of the same word in section 20 of the Summary Offences Ordinance (Cap. 228) in respect of the persistently making telephone calls is anything to go by, the authenticated Chinese version makes its meaning abundantly clear as it reads, "不斷[打電話]".

12. In fact, a mental element may be (but is not always) imported under the word "vexatious". Lam J in *Ma Kwai Chun*, quoting dictum from English cases, had this to say,

> "37. ... the description 'vexatious' in the context of section 27 has a wider meaning [than] that given to the same word in the context of O.18, r.19 ...
>
> 38. ....
> (a) Proceedings can be regarded as vexatious if:
> (1) they are instituted <u>with the intention of</u> annoying or embarrassing the person against whom they are brought; or
> (2) they are brought <u>for collateral purposes</u>, and not for the purpose of having the court adjudicate on the issues ...; or
> (3) <u>irrespective of the motive</u> of the litigant, they are so obviously untenable or manifestly groundless as to be utterly hopeless."
>
> (b) Proceedings can also be vexatious if it is prosecuted in a vexatious manner: ...
>
> ...
> 40. Vexation <u>can</u> stem from the motive of the litigant, the merit of the claim <u>or</u> the manner in which the claim is prosecuted."
> (*Emphasis added)*

13. In view of the above, it is considered that the Chinese rendition "經常" of the term "persistently" is appropriate in the context of section 27 of the HCO.

G. The Judiciary Administration/Administration to explain the rationale for raising the threshold for granting a vexatious litigant leave to institute or continue proceedings under the proposed section 27A(1)(b), requiring that there were reasonable - not just prima facie - grounds for the proceedings.

14. As mentioned in para. 8 above, section 27 of the HCO is modeled on section 51 of the Supreme Court Judicature (Consolidation) Act 1925 in England and Wales, which has since been replaced by section 42 of the Supreme Court Act 1981. As noted in the Final Report on CJR (paras. 435- 436), one of the changes introduced by section 42 of the Supreme Court Act 1981 is raising the threshold for granting a vexatious litigant leave to issue fresh proceedings or for making a fresh application, requiring the court to be satisfied that the proceedings or application are not an abuse of the process and that there are *reasonable* – not just *prima facie* – grounds for the proceedings or application. The Working Party considered that the amendments introduced by section 41 of the Supreme Court Act were plainly desirable.

15. Given that all vexatious litigants subject to an order under section 27 of the HCO would invariably have a history of instituting vexatious litigations, it is considered that the higher threshold of a "*reasonable*", instead of "*prima facie*", grounds would not create any injustice to the vexatious litigant. The proposed amendment is also in line with the objective of Part 5 of the Bill to screen out vexatious litigation, thereby enabling fairer distribution of the court's resources for genuine disputes.

H. The Judiciary Administration/Administration to provide a written response on whether consideration could be given to providing a mechanism for a person who was subject to a vexatious litigant order to apply for setting aside the order even though he had no intention to issue any legal proceedings.

16. A vexatious litigant order can be appealed against under section 14(1) of HCO. If the appeal period is over, an application can be made to the Court of Appeal pursuant to O.3, r.5 for extension of time

for appealing: see Hong Kong Civil Procedure 2007, para. 59/4/12 & 59/4/14. We therefore consider that there is no need to introduce a mechanism for a person who was subject to a vexatious litigant order to apply for setting aside the order.

I. The Judiciary Administration/Administration to clarify whether under the proposed section 27A(2), an application for leave to appeal concerning the same legal proceedings could be re-submitted after being previously refused.

17. No. Re-submitting an application for leave which has already been refused is itself an abuse of process, for it offends the doctrine of *res judicata* and is an attempt to circumvent the new section 27A(2) of HCO.

Part 6 - Discovery

J. To provide information on the scope and definition on the term "*professional adviser*" in section 41(1)(b) of HCO after the court's jurisdiction is broadened to cover pre-action disclosure in all types of civil cases.

18. The present scope of the term "*professional adviser*" in sections 41(1)(b) is wide enough to cover any professional adviser employed by an intending plaintiff. In the personal injuries context, such professional advisers might include (apart from medical advisers) actuaries or other professionals qualified to advise on the quantification of damages. It might also include other professional advisers whose expertise may be relevant in the context of the particular claim that arises – for example, architects or engineers whose views might be relevant to the issue of liability in a case involving injuries arising in an accident caused by an unsafe or dangerous structure.

19. If the scope of section 41 is expanded to cover all civil claims, the type of professional advisers whose input may be needed by an intending plaintiff would depend on the nature of his claim. It might therefore extend to advisers such as experts in accounting, financial or investment matters, or in relation to scientific or technical matters. There does not seem to be any reason why disclosure to such other professional advisers should not be provided for in an appropriate case.

K. To consider whether, from a drafting point of view, the proposed amendments to section 41(1) (which currently applies to orders for pre-action disclosure in cases involving personal injuries and death claims) are appropriate for the purpose of broadening the court's power to cover pre-action disclosure in all types of civil cases.

20. Having regard to the fact that there may well be cases in which disclosure to an intending plaintiff's professional advisers may be desirable in order to enable the intending plaintiff to adequately assess the viability of his proposed claim, it would seem that the wording of the section will remain appropriate notwithstanding the broadening of the court's jurisdiction as proposed by the amendments.

Part 8 – Leave to Appeal

L. The Judiciary Administration to provide information on the success rate of interlocutory appeals.

21. The statistics on interlocutory matters on appeal from the Court of First Instance to the Court of Appeal in the past three years (2004-2006) are appended below -

Year	Allowed	Dismissed	Total
2004	17	51	68
2005	24	80	104
2006	29	59	88

Part 10 – Costs against Non-party

M. The Judiciary Administration to -

(a) provide a response to the concern expressed by the Law Society of Hong Kong in paragraph 2(b) of its submission dated 22 June 2007 [LC paper No. CB(2)2260/06-07(01)];

(b) provide background information on the proposed amendments in Part 10 of the Bill, including reference to practice and experience in UK; and

(c) provide for members' reference a copy of the draft subsidiary legislation relevant to Part 10 of the Bill.

22. Re items (a) and (c) above, the draft Rules are still being finalized. Amendments along the lines of the CPR 48.2 (as proposed to Order 15 in the Consultation paper issued in April 2006) would be made to provide that where the court was considering whether to make such an order, the person who was not a party to the proceedings must be joined as a party to the proceedings for the purposes of costs, and that person must be given an opportunity to attend a hearing at which the Court should consider the matter further.

23. Re item (b), as noted in *HK Civil Procedure*, vol.2, pp.355-6, the existing section 52A of the HCO is modeled on s.51 of the English Supreme Court Act 1981. However, an important distinction exists between these two sections. Section 52A(2) provides that subject to specific provision, no order of costs may be made against a non-party, but there is no similar provision in section 51 of the English Supreme Court Act 1981. As such, in order to seek costs against a non-party, a person must satisfy the court that: (1) the non-party is in fact a "party" within the meaning of section 2; or (2) apply for a joinder to join the non-party to the proceedings in order to overcome the prohibition in section 52A(2) (see *The Hong Kong Housing Authority v. Hsin Yieh Architects & Associates Ltd & Others* [2006] 1 HKLRD 316 and *Best Consultants Ltd v. Aurasound Speakers Ltd,* unreported, CACV No. 41 of 2006).

24. As many Hong Kong cases have recognised, a literal application of the existing section 58(2) of HCO can produce unjust results. Notably, it cannot catch funders behind the litigation who are not parties to the proceedings (or parties on the record).

25. Section 51 of the Supreme Court Act 1981 in England and Wales gives the court full power to determine by whom and to what

extent costs are to be paid. The Court of Appeal has laid down guidelines for the exercise of this power, see *Symphony Group Plc v Hodgson* 1993 4 All E.R. 143, CA. As set out in the *Civil Procedure* vol.1, pp.1296-1301, the following are material considerations in exercising the power to award costs against non-parties -

> "(1) An order for the payment of costs by a non-party would always be exceptional. The judge should treat any application for such an order with considerable caution.
>
> (2) It would be even more exceptional for an order for the payment of costs to be made against a non-party where the applicant had a cause of action against the non-party, and could have joined him as a party to the original proceedings.
>
> (3) Even if the applicant could provide a good reason for not joining the non-party against whom he had a valid cause of action, he should warn the non-party at the earliest opportunity of the possibility that he might seek to apply for costs against him.
>
> (4) An application for payment of costs by a non-party should normally be determined by the trial judge (see *Bahai v Rashidian* [1985]1 W.L.R.1337).
>
> (5) The fact that the trial judge in the course of his judgment had expressed views on the conduct of the non-party, neither constituted bias nor the appearance of bias.
>
> (6) The procedure for the determination of costs is a summary procedure, not necessarily subject to all the rules that would apply in an action. Thus, subject to any relevant statutory exceptions, judicial finding are inadmissible as evidence of the facts upon which they were based in proceedings between one of the parties to the original proceedings and a stranger. Yet in the summary procedure for the determination of the liability of a solicitor to pay the costs of an action to which he was not a party, the judge's findings of fact may be admissible. This departure from basic principles can only be justified if the connection of the non-party with the original proceedings was so close that he will not suffer any injustice by allowing this exception to the general rule.
>
> (7) In so far as the evidence of a witness in proceedings might lead to an application for the costs of those proceedings against him or his company, it introduced yet another exception to a valuable general principle.

(8) The fact that an employee of a company gave evidence in an action did not normally mean that the company was taking part in that action, in so far as that was an allegation relied upon by the party who applied for an order for costs against a non-party.

(9) The judge should be alert to the possibility that an application for costs against a non-party was motivated by a resentment of an inability to obtain an effective order for costs against a legally aided litigant."

Part 12 – Lands Tribunal

N. The Judiciary Administration to provide background information on the proposed amendments in Part 12 of the Bill, including information on consultation conducted and comments received thereon.

26. In April 2005, the Judiciary completed a review of the Lands Tribunal Ordinance ("LTO") (Cap. 17) and the Lands Tribunal Rules ("LTR") (Cap. 17A) (hereafter referred to as "the Review"), and informed the LegCo Panel on Administration of Justice and Legal Services ("AJLS") of its recommendations (paper ref. LC Panel No. CB(2)1320/04-05(02) refers). Most of the recommendations are related primarily to application for possession of premises, with a view to streamlining the procedures. Recommendations are also made in respect of the jurisdiction and other practice and procedure of the Tribunal, with a view to making the processing of claims in the Tribunal more efficient and expeditious. Members of the AJLS Panel generally supported the recommendations in the Review.

27. The Judiciary Administration had also consulted the two legal professional bodies on the Review, and reported to the AJLS Panel on the outcome of its consultation in November 2006 (paper ref. LC Panel No. CB(2)430/06-07 (02) refers). The Law Society had indicated that it endorsed the proposals in the Review. The Bar Association had commented on certain recommendations in the Review relating to the proposed amendments to the LTR, and those relating to amendments to primary legislation, i.e. LTO and the District Court Ordinance ("DCO") (Cap. 336). The Judiciary has responded to their comments. Having noted the Judiciary's position and clarifications, the Bar Association has indicated either agreement to the proposed amendments or no further comments. The Bar Association's comments on proposed amendments to the LTO and the Judiciary's response are set out at **Annex B**.

Annex B

28. The recommendations requiring amendments to the LTR were effected by the Lands Tribunal (Amendment) Rules 2006 which came into operation on 30 April 2007. As regards the recommendations in the Review requiring amendments to primary legislation, they are contained mainly in Part 12 of the Bill, which also contains amendments consequential to some of the amendments made in respect of the HCO and DCO for the CJR, namely, amendments to -

(a) Make it clear that, unless provided for by other enactment, the Lands Tribunal does not have jurisdiction to deal with costs-only proceedings; and

(b) Empower the Lands Tribunal to make costs orders against non-parties and wasted costs orders against barristers and solicitors.

Administration Wing
Chief Secretary for Administration's Office

Judiciary Administration

September 2007

Extract from
Stroud's Judicial Dictionary of Words and Phrases (7th edition)

PERSISTENT. "Is leading persistently a dishonest or criminal life" within the meaning of Prevention of Crime Act 1908 (c.59), s.10(2)(a): see *R. v Turner* [1910] 1 K.B. 346, and *Lord Advocate v Gillam* [1910] S.C. (J.) 84.

"Persistently to solicit" (Sexual Offences Act 1956 (c.69), s.32). A card in a shop window advertising "services" can be persistent for the purposes of this section (*R. v Burge* [1961] Crim. L.R. 412). "Persistently" connotes a degree of repetition of the importuning; either more than one invitation to one person or a series of invitations to different people (*Dale v Smith* [1967] 1 W.L.R. 700).

Whether a parent has "persistently" failed to discharge his parental obligations within the meaning of the Adoption Act 1958 (c.5), s.5(2); now Children Act 1975 (c.72), s.12(2)(c) is a question of fact and degree, and it was held in this case (perhaps incorrectly) thatg "persistently" is to be understood in the sense of permanently" (*Re D. (Minors) (Adoption by Parent)* [1973] Fam. 209). A doctor's report, in the absence of any oral evidence, can be sufficient basis on which to conclude that there had been "persistent ill-treatment" within the meaning of s.12(2)(e) (*Re A. (A Minor)* (1979) 10 Fam. Law. 49).

"Persistently in default" (Companies Act 1948 (c.38), s.188(1)(b); as amended by Companies Act 1981 (c.62), s.93; now Companies Act 1985 (c.6), s.297(1)). Repeated failure by a liquidator to comply with the "relevant requirements" as to the filing of returns and accounts was sufficient to amount to his being "persistently in default", notwithstanding that at no stage was an enforcement order made or a conviction obtained. Culpability is irrelevant. "Persistently" connotes some degree of continuance or repetition either in the same default or in a series of defaults. In this case 27 defaults in two years was held to amount to persistent default (*Re Arctic Engineering* [1986] 1 W.L.R. 686).

"Persistence" meant a degree of repetition by more than one invitation to a person or invitations to different persons (*R. v Tuck* [1994] Crim.L.R. 375).

Extract from
Words and Phrases Legally Defined (3rd edition)

PERSISTENT

[The appellant had been convicted of 'persistently' importuning in a public place for immoral purposes, contrary to the Sexual Offences Act 1956, s 32.] 'The sole point taken by counsel for the appellant is that there must be a persistent importunity, and whatever the word "persistent" means, it must, so he says and I think rightly, mean a degree of repetition, of either more than one invitation to one person or a series of invitations to different people.' *Dale v Smith* [1967] 2 All ER 1133 at 1136, per Lord Parker CJ

[The Adoption Act 1958, s 5(2) (repealed) provided that the court might dispense with consent to an adoption where any person whose consent would normally be required had 'persistently' failed to discharge the obligations of a parent or guardian.] 'It is not helpful to attempt to give a meaning to the adverb "persistently" by reference to its use in other Acts, e.g. "persistently importuning" or "persistent cruelty". A black eye in each of two consecutive weeks might well justify a finding of persistent cruelty; but a father who failed to send two weekly instalments of child maintenance could never be said to have persistently failed to discharge his obligations as a parent. I think that in the subsection the word is to be understood in the sense (see the Shorter Oxford English Dictionary) of "permanently", which is consistent with the few reported decisions.' *Re D (Minors)* [1973] 3 All ER 1001 at 1005, per Sir George Baker P

[Under the Adoption Act 1976, s 16, parental agreement to the making of an adoption order will be able to be dispensed with on various grounds, including the parent or guardian having 'persistently' failed without reasonable cause to discharge the parental duties in relation to the child.]

Recommendations in the Lands Tribunal Review
Relating to Amendments to Primary Legislation
Comments from the Bar Association and the Judiciary's Response

Types of Possession Claims (LTO Section 8)

A. ***Section 8 of the LTO should be amended to confer comprehensive jurisdiction on the Lands Tribunal to adjudicate all types of possession claims regardless of the basis of such claims.***

The Bar has questioned whether the proposed amendment to section 8 of the LTO is recommended to give the Lands Tribunal exclusive jurisdiction over all types of possession claims regardless of their basis.

2. The Judiciary has clarified that the proposed amendments to section 8 seek to give the Lands Tribunal a comprehensive non-exclusive jurisdiction over all types of possession cases. This is in addition to its existing jurisdiction, dealing with, among other things, common law claims of termination by notice to quit, forfeiture by breach of tenancy (including non-payment of rent) cases, and cases of termination by transition notice of termination.

Award of Damages (LTO Section 8)

B. ***Section 8 of the LTO should be amended to give the Tribunal the jurisdiction to award damages solely as well as in addition to rent and mesne profits.***

3. The Bar has questioned the need to amend section 8 of the LTO to give the Lands Tribunal the jurisdiction to award damages solely as well as in addition to rent and mesne profits, as it considers that the existing section 8(9) already empowers the Lands Tribunal to award damages.

4. The Judiciary has pointed out that section 8(9) of the LTO is not broad enough to encompass the making of an order for possession on acceptance of repudiation of tenancy agreement and consequential award of damages. This ground of possession is becoming more and more common as an alternative to claims for forfeiture. The inclusion of this

ground requires the additional power for the Lands Tribunal to award damages as a consequential order. Therefore, the Judiciary proposes to amend section 8(8) to expressly empower the Lands Tribunal to deal with this additional ground of possession and to make the consequential order. The proposed amendment does not seek to empower the Lands Tribunal to award damages that may go beyond its jurisdictional limit on the types of cases it can entertain.

Jurisdiction of the Tribunal (LTO Section 10)

C. Section 10 of the LTO should be amended in a manner to make it clear that the Tribunal should generally have the same power and jurisdiction as that of the Court of First Instance on matters of practice and procedures, and the references to specific matters in the original version could be deleted.

5. The review recommends that section 10 of the LTO should be amended to make it clear that the Lands Tribunal should generally have the same power and jurisdiction as that of the CFI on matters of practice and procedures. The Bar (i) has asked whether the proposed amendment would empower the Lands Tribunal to grant injunctions, bearing in mind that the District Court in its jurisdiction did not generally have the power to do so; and (ii) is concerned that the proposed deletion of the specific matters under section 10(1) might pose difficulty to litigants in person in understanding the procedural law of the Lands Tribunal.

6. The Judiciary has clarified that -

(a) The Lands Tribunal currently has the power to grant injunctions. This power is often exercised in obstruction of common area cases in the building management context.

(b) It is not recommended that the whole of section 10(1) be deleted, but only paragraphs (a) to (i) thereunder, which may appear to restrict the Lands Tribunal's powers to adopt the High Court's practice and procedure to these specific matters only. The proposed deletion would make it clear that the Lands Tribunal has the flexibility to adopt the High Court practice and procedures generally.

Costs (LTO Section 10)

D. Section 12 of the LTO should be amended to spell out clearly that the Registrar of the District Court has the power to tax the Tribunal's orders of costs. Moreover, the Presiding Officers and Members of the Tribunal should be given the express power to carry out summary assessment of the amount of costs payable under the Tribunal's orders of costs.

7. The Bar has commented that the recommendation appears to be in order.

Transfer of Proceedings from the District Court to Lands Tribunal (DCO Section 42)

E. Section 42 of the DCO should be amended to include the Lands Tribunal as a venue for transfer.

8. The recommendation here appears to be in order.

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