

## **Submission of Consumer Council on Clauses 21 and 22 of the Statute Law (Miscellaneous Provisions) Bill 2007**

1. The Council supports in principle the expansion of the province of section 18 of the Costs in Criminal Cases Ordinance to the effect that any costs incurred by a party to criminal proceedings as a result of unjustifiable conduct on the part of his or her legal or other representative will be borne by that lawyer or representative.
2. In amending the Ordinance, we suggest that wordings of the relevant amendments should be carefully drafted to ensure that consumer interests in having proper and adequate representation would not be jeopardized. We are pleased to see that section 18 be amended under the Bill to the effect, inter alia, that "fearless advocacy under the adversarial system of justice" shall be one of the factors considered by the court when determining whether or not to make a wasted order.
3. Despite the "fearless advocacy" safeguard, the Council is still concerned that the wordings such as "misconduct", "default" and "unreasonable act or omission" in the proposed provisions of Clause 21 of the Bill might be too wide and uncertain and might have an inhibitive effect on the legal representative. We suggest that the circumstances which would constitute "wasted costs" should be clearly defined.
4. In this premise, subject to any revision of wordings in consequence of the above consideration, we suggest "misconduct" and "unreasonable act or omission" should be properly defined. Moreover, a proper safeguard should also be afforded in Clause 21(b) by making "it is unreasonable to expect the party to the proceedings to pay" an additional rather than alternative element to the improper acts or omissions in constituting the circumstances under which "wasted costs" are incurred.

Consumer Council

16 June 2007