



CONSUMER COUNCIL

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4 March 2008

Mrs. Percy MA
Clerk to Subcommittee
Subcommittee on Draft Subsidiary Legislation
Relating to the Civil Justice Reform
Legislative Council Building
8 Jackson Road, Central, Hong Kong

Dear Mrs. Ma,

Subcommittee on Draft Subsidiary Legislation
Relating to the Civil Justice Reform

With reference to your letter of 5 February 2008, I write to express the Consumer Council's view on the proposed amendments to the Rules of the High Court ("RHC").

The Council supports in principle the objectives and the Court's case management powers set out in the proposed New Orders 1A and 1B of the RHC, hoping that a fair, cost-effective and expeditious legal process will be achieved without compromising justice.

The Council notes that the said proposed amendments are to implement some of the recommendations made in the Final Report of the Chief Justice's Working Party on Civil Justice Reform. The issues to be discussed in the Steering Committee are quite technical and apparently not directly related to consumer concerns, except the wasted costs order against legal representative under the proposed amendment to Order 62 r.8.

On wasted costs order, the Council supports the expansion of the province of Order 62 r.8 to the effect that any costs incurred by a party to civil proceedings (e.g. consumer for legal service) as a result of unjustifiable conduct on the part of his or her legal representative (a counsel or solicitor) will be borne by that representative. It may serve as a safeguard for consumer who may otherwise have to bear the costs unreasonably or improperly incurred by his or her legal representative.

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On the other hand, it is also the concern of the Council whether the proposed provisions would bring about inhibitive effect on legal representatives in conducting their cases. We appreciate that under s.52A(5) of the Civil Justice (Miscellaneous Amendments) Ordinance, the interest that there be "fearless advocacy under the adversarial system of justice" is a factor the Court shall consider, in addition to all other relevant circumstances, when determining whether or not to make a wasted costs order against the legal representative concerned. Nonetheless, the Council is still concerned that the wordings such as "unreasonable act or omission", "misconduct" and "default" used in defining conduct giving rise to wasted costs in the proposed provisions of s.52A(6) of the Ordinance might be too wide and uncertain and might have an inhibitive effect on the legal representative. As such, subject to any revision of wordings in consequence of further consideration, we suggest "misconduct" and "unreasonable act or omission" should be properly defined.

Last but not least, it is envisaged that judges will play a more proactive role in case management with a view to securing a quick and efficient legal process while upholding the principle of natural justice. As such, judges' proficiency in implementing the proposed rules is of utmost importance and relevant training programmes should not be overlooked.

Yours sincerely,



Ms. Connie LAU
Chief Executive
Consumer Council