

**LETTERHEAD OF THE UNIVERSITY OF HONG KONG FACULTY OF LAW**

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1st September 1998

Mrs Percy MA  
Clerk, Bills Committee on Evidence (Amendment) Bill 1998  
HKSAR Legislative Council Secretariat  
8 Jackson Road,  
Central,  
HKSAR

Dear Mrs Ma,

Evidence (Amendment) Bill 1998

Responding to your invitation to members of the Faculty of Law, HKU, to make representations to the Bills Committee on Evidence (Amendment) Bill.

1. The principal effects of the Bill are two:
- (i) to confine the relevance of the hearsay character of all forms of evidence in civil cases to the weight and quality of that evidence, not its admissibility;
  - (ii) to dispense with formal notice requirements when a party in a civil trial seeks to adduce hearsay evidence.

As to the first, this seems clearly right. Given that the vast majority of civil trials are judge only trials, preliminary argument about the admissibility of hearsay evidence irrespective of its quality is an unnecessary and expensive step. Present judicial control over costs and the course of the proceedings should generally be sufficient to discourage parties from adducing hopelessly unreliable hearsay. The judiciary, properly alerted by counsel, can surely be relied upon to identify the weaknesses in hearsay evidence. It is the weight and quality of evidence offered which should be the real issue, not its hearsay or non-hearsay character.

As to the second, the word from the profession is that the present system of notice provides little in the way of advance warning of the other party's intention to call hearsay evidence beyond that provided by discovery, disclosure and exchange requirements. On the other hand, its technicality does permit parties to use the notice procedure to generate delaying and expense incurring pretrial disputes. Ensuring good judicial case management seems a surer safeguard against undesirable surprise tactics while offering fewer opportunities for cynical abuse. In any case, a judge does not need the fact that no formal notice of the intention to adduce hearsay evidence was given to appreciate and respond to the disadvantage suffered by a party who has been taken by surprise.

Therefore, I support both the objectives and the form of the Evidence (Amendment) Bill 1998.

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2. I would like to attend the meeting on the 17th. Unfortunately, my teaching commitments for that day are still uncertain. I will confirm my attendance as soon as the teaching schedule has been finalised, certainly no later than the end of this week.

Thankyou for the opportunity to contribute.

Yours sincerely,

Janice Brabyn  
(Department of Law)