

LETTERHEAD OF DEPARTMENT OF JUSTICE
Law Drafting Division

本司檔號 Our Ref.: (22) in LDT/150/00/8 (A) II

By fax 2509 9055

來函檔號 Your Ref.:

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27 October 1998

Ms Percy Ma
Clerk to Bills Committee
Legislative Council
8 Jackson Road
Central
Hong Kong

Dear Ms Ma,

re: Bills Committee on Evidence (Amendment) Bill 1998

On 26.10.98 the Administration received the judiciary's comments on the draft CSAs attached to my letter to you dated 19.10.98. In short, the judiciary do not support the CSAs. The germane parts of their comments are as follows -

“2. One of the main objectives of the Law Reform Commission (the Commission) in suggesting a change in the law regarding hearsay evidence is to save time and costs which are very often being wasted by litigants at the moment by the filing of hearsay notices and objections. Disputes on these notices and objections (in the form of counter notices) are frequently the subject matter of interlocutory hearings and appeals.

3. The effect of the proposed Clause 2(a) is to re-introduce the existing procedure of raising objections and asking the court to adjudicate on them. The only change is to defer the decision to the end of the trial. The effect of Clause 2(b) is to re-introduce the procedure of hearsay notices. If these two procedures are re-introduced, the parties are likely to take them up as a matter of routine to safeguard their position at the trial. These are two of the matters which the Commission wants to dispense with. Their re-introduction would render the proposals of the Commission almost nugatory.

4. We note that the UK Acts retains the procedure of giving advance notice of the use of hearsay evidence [i.e. clause 2(b)]. The reasons for dispensing with it have been clearly set out in paragraphs 5.34 to 5.37 of the Commission's Report. We agree with those reasons."

This letter is to inform the Committee as to the judiciary's position prior to the meeting set down for 29.10.98 to discuss the CSAs. I cannot advise as to any change in the Administration's position in view of the judiciary's comments, as there is insufficient time to carry out the necessary internal consultation before that meeting.

Yours sincerely,

(Geoffrey Fox)
Senior Assistant Law Draftsman
(Legislative Counsel)

c.c. Legal Policy Division (Attn:Mr Michael Scott
Ms Daphne Siu)
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Law Reform Commission (Attn:Mr Thomas Leung) - f/i