



THE UNIVERSITY OF HONG KONG
FACULTY OF LAW

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香港大學
法律學院

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FACSIMILE COVER SHEET

TO : Department of Justice

FROM : Professor Albert H Y Chen

ATTN : Mr Robert Allcock ^{14/5}

TEL. : (852) 2859-2948

FAX NO. : 2501 0371

FAX NO. : (852) 2559-5690

DATE : 17 May 00

NO. OF PAGES : 3
(including cover sheet)

MESSAGE (if any) :

Dear Bob,

Re: Interpretation and General Clauses (Amendment) Bill

Thank you for speaking at our staff seminar on the above Bill. A number of teachers at our Faculty have now produced a joint submission to the Legco Bills Committee working on this Bill. We should be grateful if you could forward our views to the Committee.

The handwritten signatures have not been included as the colleagues concerned have signed "electronically" by E-mail.

Yours sincerely

Professor Albert Chen

Dean

電話 Telephone	院長 Dean	2859 2948	傳真 Fax	國際 International	(852) 2559 5690	電傳 Telex	71919 CEREB HX
	院務主任 Faculty Secretary	2859 2947		本地 Domestic	2559 5690	電報 Cable	UNIVERSITY, HONG KONG
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② SAGCGA)
12/15

TO : Department of Justice

FROM : Professor Albert H Y Chen

TEL : (852) 2859-2948

ATTN : Mr Robert Allcock

FAX NO. : (852) 2559-5690

FAX NO. : 2501 0371

DATE : 18 May 00

NO. OF PAGES : 1
(including cover sheet)

MESSAGE (if any) :

Dear Bob

Re: Cap 1

I refer to my fax to you yesterday and am pleased to add that Professor Johannes Chan has now agreed to be added to the list of signatories.

Sincerely

Albert

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Telephone

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TO : Department of Justice

FROM : Professor Albert H Y Chen

TEL. : (852) 2859-2948

ATTN : Mr Bob Allcock

FAX NO. : (852) 2559-5690

FAX NO. : 2501 0371

DATE : 22 May 00

NO. OF PAGES : 1
(including cover sheet)

MESSAGE (if any) :

Dear Bob,

Re: Cap 1

I am pleased to inform you that in addition to Johannes Chan,
Mr J.A. McInnis, Associate Professor, ~~has~~ also agreed to
become a signatory to our joint submission.
res

and Ms Janice Brabyn, Lecturer,
have

Sincerely -

Albert Chen

電話
Telephone

院長
Dean

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電報

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**Our Views on the Interpretation and General Clauses (Amendment) Bill 1999
Use of Extrinsic Materials in the Interpretation of Ordinances**

We are members of the teaching staff at the Faculty of Law of the University of Hong Kong. We write in our individual capacity.

We are in support of the proposed legislation for the following reasons:

1. We accept that a strong case for introducing the proposed legislation has been made out by the Law Reform Commission in its well-researched Report issued in March 1997. We take the view that the proposed legislation is a useful and desirable piece of legislation which helps to clarify the existing common law position but which also preserves sufficient flexibility for the further development of the common law in this area.
2. In particular, we believe it is preferable to have a bilingual statute clearly explaining the use of extrinsic materials than to rely on a number of local and overseas judgments in English language. This would enhance the public's access to the law.
3. We also note that the trend in the common law jurisdictions is towards abolishing the artificial rules on admissibility and allowing the use of materials in court proceedings so long as they are relevant and reliable. Greater trust is placed on the court's ability to screen out irrelevant or unreliable materials in the adjudication process and on the use of case management to minimise abuse. One notable recent example is the abolition of the civil hearsay rule. We believe with the introduction of the proposed legislation, there will be a saving of the court's time (and hence costs) in dealing with technical arguments as to whether certain types of extrinsic materials can be admissible.
4. As regards the concern of escalation of legal costs in conducting research on extrinsic materials, it seems to us that with or without the proposed legislation, practitioners will still need to do the necessary research in view of *Pepper v Hart* [1993] AC 593. On the other hand, the proposed legislation sets out extrinsic materials that are *prima facie* relevant or reliable and so may save costs in conducting research on relevant cases dealing with the admissibility of extrinsic materials.
5. We accept that there is no pressing need for the proposed legislation. However, we think law reform can in suitable cases be proactive and not just be reactive to pressing need. We note that during the consultation process conducted by the Law Reform Commission in 1996, views were expressed to the effect that whilst there was a strong case for introducing legislation, it was not appropriate to

implement the recommendations of the Law Reform Commission's proposal at a time of constitutional change in Hong Kong. 4 years have since passed (during which period the common law continues along the trend of *Pepper v Hart*) and we do not think any useful purpose will be served by adopting the "wait and see" approach. We understand that if the proposed legislation cannot be passed within the current LegCo session, the likelihood is that it will be shelved for the years to come. This means the use of extrinsic materials will continue to be governed by the existing complicated common law in this area (perhaps with further change developed by judicial decisions in a piece-meal manner) without the benefit of a bilingual legislation.

We would however like to stress that it is of vital importance that all the extrinsic materials set out in the proposed legislation be conveniently accessible to practitioners as well as to the general public. In particular, the proposed s.19A(2)(e) refers to any other relevant document that was laid before or furnished to LegCo members. This provision covers LegCo Briefs. We understand that the LegCo Briefs are now open to the public but in the past they were classified as confidential documents. As the proposed legislation applies also to previously enacted statutes, the Administration should take active steps to ensure that all those LegCo Briefs (and other documents furnished to the LegCo members) be made generally available and accessible to the public.

Dated the 17th of May 2000

List of Signatories

Anne R Carver
Carole Petersen
DR B Rwezaura
Dr Fu Hua Ling
Eric Cheung
Felix WH Chan
Jill Cottrell

Katherine Lynch
Professor Albert Chen
Professor Michael Wilkinson
Professor Roda Mushkat
Robert Morgan
Wilson Chow
Zhang Xian Chu

* A member of the Law Reform Commission involved in the publication of the Report on Extrinsic Aids in 1997 and declare his interest accordingly