

Information Paper on Consultation
Bills Committee on
Interpretation and General Clauses (Amendment) Bill 1999

Arguments for the Bill

Before noting the results of the consultation, the main arguments in support of the Bill from the perspective of the Administration are briefly summarised as follows –

- (1) The proposed new section 19A of the Interpretation and General Clauses Ordinance (Cap. 1) would provide an accessible, bilingual, user-friendly guide to a complex and obscure area of the law by specifying, under section 19A(2), a non-exhaustive list of the more important extrinsic material which may be considered as relevant in the interpretation of an Ordinance, and allowing any other material which might be relevant to be admitted under the generality of section 19A(1).
- (2) Since section 19A avoids issues of admissibility under case law by specifying the type of extrinsic material which may be used, much time and costs of litigation would be saved by enabling the parties and the court to bypass the need to research and argue cases, and to proceed directly to the question whether any material sought to be introduced by the parties is sufficiently relevant to assist in interpreting the provision of the Ordinance in question.
- (3) Section 19A expressly preserves judicial flexibility since the court is neither required to refer to, nor prohibited from referring to, any extrinsic material, and the common law is preserved under section 19A(7).

- (4) The Administration does not claim that there is a pressing need for the Bill, but this criterion only applies to a narrow range of legislation (for example, where it is sought to restrict fundamental rights). As with most legislation, the object of the Bill is to make a useful improvement in the general law.

Consultation

2. The Administration circulated a Consultation Paper (Annex A) to the Judiciary, City University of Hong Kong, University of Hong Kong, the Law Society of Hong Kong, and the Hong Kong Bar Association. Copies of their responses are annexed and a brief summary of the main points made in each response follows.

Judiciary (Annex B)

- (1) Codification of the relevant legal principles from decided cases, as in this case, is useful to the court and to the legal profession. Counsel would know what sort of materials they should research and the court would know what sort of materials can be referred to. This would save some unnecessary arguments and research.
- (2) The categories of materials set out in section 19A(2) are not exhaustive. It is open to the court to examine decided cases from other common law jurisdictions to see whether other categories of materials may also be relevant to interpretation.
- (3) It is the duty of counsel to refer for the court's consideration other materials which they think are relevant to the interpretation of a particular statute. This is how jurisprudence is developed and new categories of materials are found in the process.
- (4) There is no question of the Bill promoting an escalation of litigation costs.
- (5) While section 19A(2) does not indicate how the listed materials would provide assistance, section 19A(5) gives the court discretion to decide how useful the

materials are having regard to the circumstances of the case. However, section 19A(5) seems too vague and should be refined to be more useful to the court.

City University of Hong Kong (Annex C)

- (1) There was a consensus among the teaching staff who were briefed on the Consultation Paper that the Bill should be supported.
- (2) The Bill adopts the right approach by usefully restating the existing common law on the subject of statutory interpretation but also leaving open the further development and expansion of the common law by the courts.

University of Hong Kong (Annex D)

- (1) The Law Reform Commission has made a strong case for introducing the Bill, which is useful and desirable and helps to clarify the existing common law while preserving flexibility for further judicial development.
- (2) In particular, a bilingual statute clearly explaining the use of extrinsic materials is preferable to reliance on a number of local and overseas judgments in English and would enhance the public's access to the law.
- (3) The Bill will save the court's time (and hence costs) in dealing with technical arguments as to whether certain types of extrinsic materials are admissible.
- (4) The Bill 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) While there is no pressing need for the Bill, law reform can in suitable cases be proactive and not just reactive to pressing need. No useful purpose would be served by adopting a "wait and see" approach. If the Bill is shelved, the use of

extrinsic materials will continue to be governed by the existing complicated common law without the benefit of bilingual legislation.

Law Society of Hong Kong (Annex E)

- (1) The Constitutional Affairs Committee of the Law Society confirms its support of the Bill as stated in comments submitted to the Bills Committee dated 29 April 1999.
- (2) The common law rules based on Pepper v Hart are complicated and may not be clear to users. Broad clear guidelines set out in legislation will put the rules concerning the use of extrinsic materials on a more systematic basis.
- (3) This is particularly relevant in Hong Kong where most of the population is non-English speaking, thus it is preferable to have a bilingual statute which clearly explains the relevant rules governing the use of extrinsic aids in the interpretation of statutes rather than referring to a number of lengthy judgments in the English language.

Hong Kong Bar Association (Annex F)

The Bar Association does not support the Bill because it does not see any pressing need for it.

Fine-tuning

3. The Administration invited consultees to comment on whether they considered that any fine-tuning of the Bill is necessary. As noted above, and in paragraph 7 of Annex B, the Judiciary considers that the proposed section 19A(5) seems too vague and may not be very useful to the court.

4. To meet this concern, and as agreed to by the Judiciary, the Administration proposes to amend the proposed section 19A(5), by way of a committee stage amendment,

along the lines of section 15AB(3) of Australia's Acts Interpretation Act 1901. Section 15AB(3) provides clear guidelines to the courts and practitioners for the use of extrinsic material in the following terms –

- “(3) In determining whether consideration should be given to any [extrinsic] material in accordance with subsection (1), or in considering the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to:
- (a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; and
 - (b) the need to avoid prolonging legal or other proceedings without compensating advantage.”

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