

BILLS COMMITTEE ON DISTRICT COURT (AMENDMENT) BILL 1999

21 January 2000

**Comments by the Law Society's Civil Litigation Committee on the
District Court (Amendment) Bill 1999**

The Committee has the following replies to the questions put forward by Members:-

Paragraph 6

"Some members are concerned about the proposal under proposed section 44 of the Bills that cases within DC jurisdiction are required to be transferred to the DC, subject to the power of the judge of HC to retain the matter in HC for good cause. They hold the view that if the litigating parties are happy to pay the highest cost for a case to be dealt with by HC, they should be allowed to do so."

Reply:

The Committee is of the opinion that litigation in the District Court should be efficient and cost effective and if a case is within the District Court's jurisdiction automatic transfer should take place. However, should the parties wish their case to remain in the High Court the onus should be on the parties to persuade the judge on the merits of staying in the High Court.

It was felt that if the proposed section 44 is amended then it would be unfair to those who are sued by finance companies which have incorporated contractual provisions for costs to be paid on an indemnity basis. It would be inequitable to permit finance companies, for example, to commence proceedings in the High Court and for them to unilaterally make an election stay in the High Court to recover indemnity costs at the High Court rate rather than at the lower District Court rate. One of the purposes of increasing the District Court jurisdiction is to remove standard debt collecting cases from the High Court.

Paragraph 8(b)

"Under the existing rules of HC, parties have the obligation to make available discovery of all relevant documents. Some members are of the view that whether a document should be produced for discovery is governed by the rule of relevancy. The new procedure has the effect of classifying documents as directly or marginally relevant. The Administration has advised that the proposal in para 8(b) is modelled on part 31 of the new English Civil Procedural Rules."

Reply:

The Committee agrees with the proposal to have standard discovery as particularised in sub-paragraph (b).

It should be noted however that under the English Civil Procedural Rules, these new rules do not follow existing case law, therefore care must be taken when mixing these

new rules with the existing statutory rules of the High Court which may cause difficulties.

Paragraph 8(c)

"According to the Administration, under the existing rules of DC and HC, interim payment of costs needs to go through interim taxation. Under the new procedure, if the judge or master considers that interim payment forthwith is justified, the litigating parties would be required to pay a provisional sum without going through taxation. If the amount after taxation exceeds the provisional sum, the litigating parties would need to pay the difference. Some members are concerned that the new procedure might be disadvantageous to the less resourceful party, particularly in a complex case."

Reply:

The District Court should be a procedurally simpler forum for the resolution of dispute. This provision is not consistent with these principles. The Committee is of the opinion there is no little need for this provision. In reality it is unlikely many applications will be made for interim taxation.

The Committee has an additional observation:

Paragraph 7 states:

"The major changes to be introduced under the new District Court Rules, which follow the relevant provisions in the RHC, are as follows:-

- a) Acknowledgement of Service will be filed so that the summary judgment procedure can be invoked before filing of Defence by the defendant;
- b) Litigants need to take out summons for directions before they can apply for setting down of a case for hearing;
- c) There will be an explicit rule, along the line of Order 14 of the RHC, for parties to apply for summary judgments; and
- d) Procedures for pleadings, discovery and inspection of documents and interlocutory applications will largely follow those in the RHC."

As noted the District Court should adopt procedures which would save costs. The Committee recommends that once a writ has been issued in the District Court procedures should be in place to provide a return date say, within 2 months from the date of the issue of the writ. In addition there should be automatic directions for discovery and this could be included in the note that is sent out with the writ.

These suggestions are similar to those currently adopted by the High Court when dealing with personal injury cases. It is submitted the provision of a return date with automatic directions would save costs and reduce the filing work of the Registry staff.

**The Law Society of Hong Kong
The Civil Litigation Committee
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