

Civil Justice (Miscellaneous Amendments) Bill 2007

Submission of the Hong Kong Bar Association

1. The Steering Committee on Civil Justice Reform consulted the public in April 2006 on proposed legislative amendments for the implementation of Civil Justice Reform (“the Consultation Draft”). The HKBA submitted its detailed response to the Steering Committee in July 2006 (<http://www.hkba.org/whatsnew/submission-position-papers/2006/20060719.pdf>).
2. This was followed by a supplementary response in November 2006 (<http://www.hkba.org/whatsnew/submission-position-papers/2006/20061115.pdf>).
3. The Steering Committee’s comments in response to the HKBA’s submissions are set out in Judiciary Administration’s Paper CJRB 1/2007 (May 2007).
4. Subject to one observation that follows, the HKBA supports the Bill generally.

5. The observation in question relates to wasted costs. The HKBA had expressed in its response to the Consultation Draft the concern on the part of many barristers that the proposed legislative amendments to empower judges to make wasted costs orders against barristers may inhibit them in the performance of their duties as advocates. In addition to the potentially ruinous effect a wasted costs order might have on an individual barrister made subject to such an order, there is presently no provision for recompensing a barrister in respect of the expenses incurred in showing cause why a wasted costs order should not be made against him or her.

6. The HKBA made a supplementary submission in November 2006 suggesting additional safeguards that could conveniently be incorporated into the proposed legislative amendments on wasted costs. The HKBA also suggested to the Steering Committee that public funding be made available to meet a legal representative's costs in successfully showing cause in response to a move made by a judge or master on his or her own motion to impose wasted costs order.

7. The Steering Committee has commented that it is not in a position to take a view as the Bar's proposal involves the use of public funds and should therefore be a matter for the Administration to decide.

8. The HKBA therefore wishes to draw the Administration's attention to its concern and ask that public funds be made available to meet a barrister's costs in successfully defending a wasted costs order and that consideration be given to including a provision to this end in the draft bill.

Dated 6 June 2007.

Hong Kong Bar Association