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**Subcommittee on Draft Subsidiary Legislation**
**Relating to the Civil Justice Reform**

## Further Comments on the Proposed Amendments to Order 59 on Appeal

1. In the course of reading the proposed amendments to Order 59 RHC (February 2008 version), I believe there are some drafting oversights, which I set out below for the Steering Committee's further consideration.

2. The proposed O 59 r 2B(1) provides that an application for leave to appeal against an interlocutory judgment or other decisions under that paragraph *"may only be made to the Court in the first instance by a summons within 14 days from the date of the judgment or order."* I believe the words *"by a summons"* should be deleted, as it is contemplated that to save costs and trouble, in many cases such an application should be made orally to the court below before or immediately after that court makes the ruling. If the application is to be made after the original hearing (e.g. when judgment is handed down in writing subsequently), it goes without saying that it has to be made by a summons, given the requirement that the application is to be made inter partes.

3. Indeed, no such reference to a mandatory requirement for application *"by a summons"* is set out in the similar provisions under O 58 r 2(4) of the Rules of the District Court.

4. The existing O 59 r 10(2) provides that *"…but, in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds."* Given that the rules are to be changed so that the *"special grounds"* requirement will apply also to an appeal against an interlocutory decision of a Master to a Judge in chambers, I believe the underlined words should also be deleted (c.f. the proposed O 58 r 1(5)).

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