Agenda Item V. Implementation of Civil Justice Reform

Extract of CJ's speech at Ceremonial Opening of the Legal Year 2009
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Civil Justice Reform

The long journey to the reform of our civil justice system to improve its effectiveness began nearly nine years ago with the establishment of the Working Party in February 2000. At every stage of the process, all stakeholders have been involved and consulted. All concerned, including judges and the legal profession, have had ample time to prepare and will be ready for the reform. We are firmly on target for implementation on 2 April 2009.

I am grateful to the Chief Judge of the High Court and judges and support staff working with him for capably steering and carrying out the work on implementation. I must also thank all concerned for their work and support. The drafting and legal work of the members of the Department of Justice was invaluable. Both the Bar and the Law Society have given constructive suggestions during the process. I would like to pay tribute to and thank the Honourable Ms Margaret Ng for her able chairmanship of the LegCo committees which scrutinized the proposed primary and subsidiary legislation.

With such a major reform, it is likely that there will be teething problems. I have therefore established a Committee to monitor the working of the reformed system and to make suggestions to ensure its effective operation. It will be chaired by the Chief Judge of the High Court and will comprise judges, a barrister, a solicitor, a member of the Department of Justice and the Legal Aid Department and an experienced mediator.

Mediation

An objective of the reformed system is to facilitate the settlement of disputes and the court has the duty as part of active case management to further that objective by encouraging and facilitating the use of an alternative resolution procedure, such as mediation, if the court considers

that appropriate. The parties and their legal representatives have the duty of assisting the court in this regard. In exercising its discretion on costs, the court will take into account all circumstances, including any unreasonable failure of a party to engage in mediation.

In this connection, it should be noted that as from 1 October 2008, the Solicitor's Guide to Professional Conduct imposes a duty on a litigation solicitor to consider and if appropriate, advise his client on alternative dispute resolution procedures such as mediation. This is of course part of a solicitor's duty to consider and act in the best interests of his client. It is also significant to note that the Legal Aid Department has taken the position that under the reformed system, legal aid is available to fund the costs of mediation of a legally aided party as costs incidental to the legal proceedings.

Following revision which takes into account the concerns of the Law Society, the draft practice direction on mediation has been accepted by the Bar and the Law Society. The Law Society has requested more time to enable solicitors to prepare for its implementation. I have acceded to this request. This practice direction will be promulgated at the same time as the other practice directions but its effective date will be 1 January 2010 instead of 2 April 2009 which is the effective date of the others.

It must be strongly emphasised that the promotion of mediation as an alternative and complementary method of dispute resolution to litigation is plainly in the public interest. Its benefits are well known; the reduction in stress, the saving of time and costs and the achievement of a satisfactory solution. Having regard to its development in many jurisdictions, it must now be regarded as an indispensable feature of a credible legal system. I understand from the Secretary for Justice that the Working Group on Mediation chaired by him is making progress in its important work. The Judiciary, the legal profession and all concerned must keep up the momentum in developing mediation.

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