Bills Committee on District Court (Amendment) Bill 1999

Letter from Munro, Claypole & Reeves

In response to the Bills Committee, the Administration set out in the following paragraphs its views on the proposals put forward by Messrs Munro, Claypole & Reeves ("MCR") in respect of section 32(3) of the District Court (Amendment) Bill 1999.

I. Proposed addition of a new section 32(3)(c)

MCR suggested that consideration should be given to amending the proposed section 32(3) in the District Court (Amendment) Bill 1999, so that paid employees' compensation should be taken into account in deciding whether the District Court should have jurisdiction over, for example, cases where there is a fairly large payments of employees' compensation leaving a small common law claim.

The Administration's Response

2. We have no objection in principle to the suggestion. However, we believe that amending section 32(3) alone, in the way suggested by MCR, might not adequately serve the purpose of putting the matter beyond doubt. For example, MCR's proposed amendment would not address the situation where the employees' compensation is only payable, not paid, when the action is taken into the District Court. Besides, under section 26 of the Employees' Compensation Ordinance (to which MCR referred in its proposed new section 32(3)(c)), reduction of the damages to take account of the employees' compensation paid or payable only happens at the time when damages are awarded at the end of a trial, not at the time when the action is to be commenced.

3. To ensure that the deserved objectives achieved, we are, in consultation

with Department of Justice, looking into other provisions in the Ordinance with the view to putting forward necessary amendments to such relevant sections as soon as possible for the Bills Committee's consideration. We shall also be seeking the views of the legal profession on the proposed amendments.

II. MCR's comments on proposed section 32(3)(b)

4. MCR also suggested that consideration be given to providing in section 32(3)(b) that any contributory negligence determined by the court or agreed between the parties should be taken into account in addition to any contributory negligence admitted by the plaintiff.

The Administration's Response

5. Our examination of the proposal in the Bill indicates that the proposed section 32(3)(b) of the Bill is sufficient to cover the situation where the parties agree on the issue of contributory negligence before the commencement of an action in the District Court. Thus, if contributory negligence is agreed between the parties, it must have been admitted by the plaintiff and the proposed section 32(3)(b) should be applicable.

6. As regards contributory negligence determined by the court, it is highly unlikely that the court would have determined contributory negligence when the plaintiff is choosing which court to commence the proceedings. In the unlikely event that this does happen, and the plaintiff does not appeal against the determination of the court, it is likely that the plaintiff has taken to admitting such contributory negligence to avoid depriving himself of the District Court's jurisdiction. If the court's determination affects the amount of the claim to the extent that the claim needs to be transferred from the Court of First Instance to the District Court, the proposed section 44(3) in the Bill would provide for such transfer.

7. We do not therefore consider it necessary to introduce an amendment to the proposed section 32(3)(b).