



Civil Justice (Miscellaneous Amendments) Bill 2007

The Law Society's Civil Litigation Committee has reviewed the Civil Justice (Miscellaneous Amendments) Bill 2007 ("the Bill") and has the following submissions:

1. Part 7 Wasted Costs

In the *Consultation Paper on Proposed Legislative Amendments for the Implementation of the Civil Justice Reforms* ("Consultation Paper"), the draft amendments to Section 52A of the High Court Ordinance (Cap.4) proposed:

"In subsection (4), "wasted costs" means any costs incurred by a party as a result of:
(a) any improper or unreasonable act or omission; or
(b) any undue delay or any misconduct or default,

on the part of any legal representative, whether personally or through an employee or agent of the legal representative"

2. The Bill

The gazetted Bill now has a new Section 52A (5) which provides the following:

"When determining whether or not to make an order under subsection (4), the Court of Appeal or the Court of First Instance shall, in addition to all other relevant circumstances, take into account the interests that there be fearless advocacy under the adversarial system of justice".

The Law Society notes similar amendments on "fearless advocacy" are proposed for the Costs in Criminal Cases Ordinance (Cap.492) in the Statue (Miscellaneous Provisions) Bill 2007.

The Administration's proposal to include "fearless advocacy" in the Civil Justice Reforms is misconceived as the jurisdictions of Civil and Criminal law are not comparable and are in fact two separate and distinct branches of the law. There is no duty on an advocate in the civil jurisdiction to be a "fearless advocate" as the parties are concerned with private disputes whereas in criminal proceedings defendants risks losing their liberty.

The Explanatory Notes to the Bill provide no explanation or rationale for this new amendment.

The Law Society considers the original draft, as published in the *Consultation Paper*, which follows S.51(6) and (7) of the Supreme Court Act 1981 to be an appropriate amendment and the new section 52A(5) of the Bill should be removed.

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

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