

Your ref: SC/CR 15/1/62

15 November 2006

Miss Vega Wong  
The Secretary  
Steering Committee on Civil Justice Reform  
Rm LG256 High Court  
Judiciary Administration  
38 Queensway, Hong Kong.

Dear Miss Wong,

**Re: Consultation Paper on Proposed Legislative Amendments  
for the Implementation of the Civil Justice Reform**

1. I refer to your letter dated 31 October 2006. In paragraph 4 of your letter, you indicate that the Steering Committee would consider any additional safeguards that can conveniently be incorporated into the draft legislation on the topic of wasted costs.
2. This letter supplements the Bar's proposals on this matter.
3. The Bar has indicated in paragraph 145 of its Response that the proposed s 52A(5) of the High Court Ordinance (Cap 4) and the corresponding provision in the District Court Ordinance (Cap 336) should be amended by inserting the word "wholly" between the words "party" and "as" therein, for the reasons stated in that paragraph.
4. The Bar has also indicated that there should be an unqualified right of appeal against wasted costs orders in paragraph 146 of its Response. There should be inserted in the proposed RHC Ord 59 r 21(1) a paragraph stipulating that a wasted costs order is an order to which s 14AA(1) of the High Court Ordinance does not apply. A similar amendment should be made to the District Court Ordinance s 63(3) to provide for appeal against a wasted costs order imposed in the District Court without leave.

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5. The Bar considers that, pursuant to paragraph 148 of its Response, s 52A of the High Court Ordinance should be amended to make provision for public funds to be made available to meet the legal representative's costs in successfully showing cause (whether at first instance or on appeal) in response to a move by a judge or master on his or her own motion to propose to impose a wasted costs order.

6. The Bar considers that while it continues to oppose the introduction of RHC Ord 62 r 8A(1) (the Court's power to make a wasted costs order on its motion), a safeguard in respect of the exercise of such a power may be introduced by amending the proposed RHC Ord 62 r 8B(2) to except the scenario of a judge or master proposing to make a wasted costs order on his own motion from the option of proceeding to the second stage without an adjournment. The Bar considers that the same effect of the proposed exception may be achieved by inserting in Ord 62 r 8B(2) a "for the avoidance of doubt clause" stating that the move by the Court to make a wasted costs order against a legal representative is not "an application for a wasted costs order".

7. The Bar lastly considers that the holding of *Medcalf v Mardell* [2003] 1 AC 120, HL can be conveniently inserted a new RHC Ord 62 r 8B(4) so that a legal representative who shows that he genuinely cannot defend himself or herself against a proposed wasted costs order at the second stage due to the exercise of legal professional privilege by his or her client against disclosure of relevant information.

8. I hope that these proposals receive favourable consideration.

Yours sincerely,

Philip Dykes SC  
Chairman

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