

MP Sylvia Lim's speech on Evidence Amendment Bill

As mentioned by the Minister in his speech, part of the rationale for the Bill is to harmonise the provisions relating to hearsay evidence for civil and criminal cases.

I am concerned that the harmonisation between civil and criminal cases should not be taken too far. I agree that the hearsay rules in civil cases can be relaxed, as they are unnecessarily restrictive. However, there is a justification for keeping strict rules for criminal cases.

The Ministry of Law itself has acknowledged that the rule against hearsay evidence should be retained in criminal cases, where an accused's life and liberty are at stake. The law thus has a default position of requiring the best and most reliable evidence. Witnesses should attend court to give oral evidence and be tested under cross-examination. What was said outside of court should only be considered under circumstances where there is no choice, such as when the witness is no longer available, or when there is an assurance that the statement made outside of court is reliable and accurate.

Clause 5 of the Bill seeks to have a common regime for admitting hearsay evidence for both civil and criminal cases. The effect of Clause 5 will be to enable out of court statements to be tendered in court simply if the witness is unavailable, unable or refuses to testify in court. This concept is borrowed from S 270(1) the Criminal Procedure Code. This Bill re-enacts part of the CPC provisions pertaining to hearsay evidence, to make them applicable to both civil and criminal cases under the Evidence Act.

Because the Evidence Act now embodies combined hearsay provisions, the Ministry is proposing under Clause 21 to delete the hearsay provisions of the CPC viz. Ss 269 to 277. This massive deletion is, I believe, consequential. It appears to dilute the strictness of rules against hearsay evidence in criminal cases.

For instance, under the current S 270(1) of the CPC, it is provided that the court can admit hearsay evidence if the witness is no longer available, "subject... to the rules of law governing

the admissibility of accused's statements". The significance of this qualifying phrase was an important issue in the Court of Appeal case of Lee Chez Kee v PP [2008] 3 SLR (R) 447. In Lee's case, the accused was charged with committing a murder with 2 other persons. His two co-participants had been sentenced earlier. By the time of the accused's trial, one of them had already been executed, while the other had been deported to Malaysia and was untraceable. One of them had made statements to the police incriminating the accused. The issue arose at Lee's trial as to whether the unavailability of the co-participant made his earlier statements to police admissible against Lee.

The Court of Appeal considered this point extensively. One long-standing concern was that, in general, accomplice evidence is to be treated with suspicion. After all, it is human tendency to drag others down with you or to push blame to others to exonerate yourself. Thus, our laws provide that confessions by accomplices can only be considered if there is a joint trial of all accused; if there is no joint trial, the confessions should not be considered at all. This is found in S 258(5) of the CPC, which was formerly S 30 of the Evidence Act.

The Court of Appeal needed to consider whether the hearsay provisions in the CPC allowed hearsay evidence from accomplices who were unavailable. The court noted that the equivalent of S 270(1) clearly stated that hearsay could be admitted "subject to the rules of law governing the admissibility of accused's statements". Two out of the three Court of Appeal judges found that this qualification meant that accomplice statements should not be admitted under the hearsay exceptions, even if the accomplices were not available.

S 270 is now being deleted and the words "subject to the rules of law governing the admissibility of accused's statements" are not being ported over to the Evidence Act. The net result is that there is no longer any express mention that the rules against accomplice evidence will apply when admitting hearsay statements. Is this omission intentional? Is it the government's intention to allow hearsay evidence from dead or unavailable accomplices in a criminal trial? This is clearly a very dangerous path to go down on.

Another result of the massive deletion of Ss 269 to 277 of the CPC is that S 271(1) is deleted. This section excluded statements made in the course of police investigations from being admitted in evidence even if the witness is unavailable or refuses to testify. This section was aimed at ensuring the witnesses attend court personally, and preserved the right of the accused to confront his accusers.

Is this omission also intentional?

Will the amendments undermine the protections against unreliable hearsay evidence in criminal trials?