

Legislative Council Brief

Barristers (Advanced Legal Education Requirement) Rules

(made by the Council of the Hong Kong Bar Association under Section 72AA of the Legal Practitioners Ordinance (Cap 159) with the prior approval of the Chief Justice)

Introduction

1. The Hong Kong Bar Association is committed to ensure that its members at all levels would provide legal service of the highest quality. To achieve this, it is thought that steps must be taken to ensure that those joining the Bar should be adequately educated, trained and prepared before they are allowed to embark on full practice. The Bar Council has decided to introduce a compulsory legal education programme for all pupils during the term of their pupillage to ensure that on top of the training they receive from their pupil masters, they would also receive training through a structured programme focusing on the practical skills required of a barrister such as advocacy and legal drafting. The compulsory programme would also contain courses designed to impart on the pupils legal knowledge on new or topical area of the law. The purpose of this subsidiary

legislation is to provide for the implementation of this compulsory programme for all pupil barristers.

Source of Jurisdiction

2. Under Section 72AA of the Legal Practitioners Ordinance, subject to the prior approval of the Chief Justice, the Bar Council is empowered to make rules providing for inter alia (1) any continuing legal education or training that must be undertaken by barristers and pupils and the consequences of failing to do so [s 72AA(d)]; (2) respecting the exemption by it or any person from compliance with the provisions of any rules made under this section and the conditions upon which such exemption may be granted in any particular case [s 72AA(i)]; and (3) prescribing anything which, under this Ordinance, is to be or may be prescribed by the Bar Council [72AA(j)].

Background and General Out Line of the Programme

3. There are many ways of getting qualified to be admitted as a barrister in Hong Kong. However, the prevailing route of getting

qualified is through obtaining a PCLL in either the University of Hong Kong or the City University. At the moment, the PCLL course of both Universities is a common course designed for both barristers and solicitors and the unavoidable consequence is that in view of, inter alia, the time constraint, the PCLL course could not provide all the training that a new barrister would need. Although both Universities are now making great efforts to reform their PCLL course, it is considered that even if the reformed PCLL course would be such that there is divided training between barristers and solicitors, there would still be a lot of room to improve on the practical skill and knowledge of new barristers before they are allowed to engage in full practice.

4. Many of the practical skills of barristers could not be acquired in a teaching institution and that is why a period of pupillage with practicing barristers is always essential in the training of barristers. Since different pupil masters would have different practices the exposure of their pupils may vary significantly. In order to ensure that all pupils should receive some minimum uniform training in their practical skill, it is considered that all pupils should be required to attend a structured programme to be organized by the Bar Council or some other accredited institutions.

5. In fact since the mid 1990s the Bar Association has been organizing various lectures from time to time designed for enriching the knowledge and experience of its members. However, at that time there was no overall planning and organization for these programmes. Since September 1998, the Bar Association has employed a full time director to take charge of organizing and administering its legal education programmes. Since then there are 2 types of legal education programmes run by the Bar Association, one is designed for pupils and very junior barristers and the other is designed for the general membership of the Bar.

6. Hence since September 1998, the Bar Council has been running an organized advanced legal education (“ALE”) programme for all pupils. Under this programme, the Bar Council would regularly organize workshops and lectures open to all pupils. Although the programme is not compulsory, the general response from the pupils is good. From the response of those who attended the programme, the Bar Council considered that the programme should be made compulsory for all pupils. Under the proposed compulsory scheme, points will be awarded to the pupils for their attendance and

participation in each of these workshops and lectures.

7. Under the Rules, the Bar Council would organize on a regular basis workshops and lectures designed for pupils. Each of the workshops and lectures would be accredited with a set number of ALE points. The Bar Council is also authorized to accredit other courses run by other organizations. The proposed compulsory scheme is that pupil barristers will be required to obtain a minimum number of points during their 12 months pupillage. There would be more than enough workshops and lectures to enable the pupils to have a choice of the workshops or lectures they would like to attend to suit their convenience.

8. In any case, since it is envisaged that all the workshops and lectures would be conducted by practicing barristers, the workshops and lectures would be held after court hours or on Saturdays. Thus the attendance of the programme should not cause too much inconvenience to the pupils.

9. Under the current Rules, a pupil is required to obtain 14 points before he is allowed to obtain a full practicing certificate.

10. Although the scheme has been widely publicized to all pupils since December 2001, and the wish of the Bar Council is to have the scheme implemented as soon as possible, the Bar Council accepted the view of the Chief Justice that the Rules should not be retrospective and accordingly the Rules would only apply to those who apply to the Bar Council for a certificate of eligibility for pupillage only. This would mean that the Rules would only apply to those who would start their pupillage after the commencement of the Rules.

11. To cater for those cases where a pupil may suffer genuine grievance there is provision in the proposed Rules to enable the Bar Council to grant exemption in the form of lowering the number of points required or to waive the requirement of the attendance of the programme altogether.

12. The proposed Rules would require the Bar Council to inform all persons who serve notice of an intention to serve pupillage the requirements and details of the programme and also the number of points required to be obtained.

13. As for a summary of the provisions of the proposed Rules, please see the Explanatory Note annexed to the end of the Rules.

Consultation and Legislative Timetable

14. The Bar Council has decided to make the proposed Rules under Section 72AA of the Legal Practitioners Ordinance. A draft of the proposed Rules had been sent to the Chief Justice and the Department of Justice for their comments. The current version of the proposed Rules has incorporated all the suggested alterations and addressed all the concerns raised. The Bar Council understands that the Chief Justice may also like to have the benefit of the views of the LegCo Panel on Administration of Justice and Legal Services before giving his approval. The Bar Council is looking forward to the approval of the Rules by the Chief Justice as soon as possible.

Enquiry

15. Enquiries on this Brief may be directed to Mr. Edward Chan S.C., the Vice Chairman of the Hong Kong Bar Association at

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Dated this 21st day of June 2002.