



HONG KONG BAR ASSOCIATION

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By Hand

Your Ref: SC/101/19/6

8 June 2006

Judiciary Administrator
 Judiciary Administration
 Judiciary
 Room 256, LG2 High Court
 38 Queensway, Hong Kong

Attn: Miss Vega Wong

Dear Madam,

Re: Lands Tribunal Review

I refer to your letter dated 11th April 2006.

The matters raised in your letter were discussed by the Bar Council at its meeting held recently. The Bar Council has the following comments:

Rule 69 - Notice of Opposition in Application for Possession of Premises

Having considered paragraphs 3 to 5 of your letter, the Bar Council now has no objection to the proposed amendment of Rule 69. However, we would like to have clarification on one matter, namely, whether the direction mentioned in paragraph 3 of your letter is a temporary measure pending the making of the Amendment Rules. We think the answer should be yes because otherwise there will be no need for any application by respondents for extension of time to file defence outside the 7 days period.

香港大律師公會

香港金鐘道三十八號高等法院低層二樓

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Vice Chairmen 副主席:
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Rule 4(5) - Interlocutory Procedure for All Types of Cases

Having considered paragraphs 6 and 7 of your letter, the Bar Council has the following comments:

- (a) The Judiciary's response has not addressed substantively the Bar Council's concern over this matter, which was conveyed to the Judiciary Administrator in April 2005. This concern is reproduced below for your ease of reference:

"Furthermore, whilst the Bar is aware of the general need for rationalizing and streamlining procedural law whenever possible, at the same time the Bar is mindful of the need for the law including procedural law to be easily and readily understood by and accessible to the users, especially litigants acting in person. Even if there are indeed equivalent enabling provisions in the Rules of the High Court, the fact that such provisions are not expressly mentioned in the LTR means that a non-party who wants to be heard in an interlocutory application in the Lands Tribunal has to find out from another sets of statutory instruments, namely the Rules of the High Court, that he has such a right (in fact a 'discretionary right') in the first place. Chances are that a litigant in person may not have the knowledge or skill, in such a roundabout way, to find out his rights or, for that matter, that he has such a right in the first place."

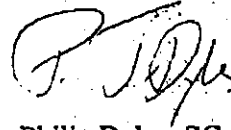
- (b) We believe the majority of the intervening third parties who are sub-tenants would be people who would ill afford legal representation. Therefore, it is doubtful whether they would, in the first place, be aware that they have a right to join as respondents.
- (c) Even if it is indeed true that very few of the intervening third parties when intervening has referred to Rule 4(5), it does not mean that they are not aware of this rule. To the contrary, one would ask why these persons would be aware, but for the existence of Rule 4(5) on the statute book, of their right to intervene.

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- (d) In the particular circumstance of this case, it is debatable whether the interest of the minority should be put at stake for the purpose of rationalizing and streamlining procedural law. In fact, strictly speaking, on one view Rule 4(5) is not redundant (see subparagraph (a) hereof). Further, it is not that Rule 4(5) has been causing any real/operational problems to the litigants or the Judiciary.

In the circumstances, the Bar Council does not feel it can support the proposed deletion of Rule 4(5).

Yours sincerely,



Philip Dykes SC
Chairman

cc: Clerk to Legislative Council Panel on the Administration
of Justice and Legal Services (fax 2509-9055)





香港司法機構
司法機構政務處

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10 September 2006

Mr Philip Dykes, SC
Chairman
Hong Kong Bar Association
LG2, High Court
38 Queensway
Hong Kong

Dear Chairman,

Lands Tribunal Review

Thank you for your letter of 8 June 2006.

2. Having considered the Bar Association's further comments, the Judiciary's response is set out below.

Rule 69 - Notice of Opposition in Application for Possession of Premises

3. The President of the Lands Tribunal directed in June 2005 that a Notice of Opposition would be accepted for filing, so long as no default judgment has been entered. This is not meant to be a temporary measure. It is not contemplated that it will cease to have effect upon the making of the Amendment Rules. The rationale for the direction is the same as that for a similar practice in the High Court, where a late defence is not treated as a nullity. It is merely an irregularity. It would be considered upon an application to enter default judgment.

Rule 4(5) - Interlocutory Procedure for All Types of Cases

4. As to Rule 4(5)¹ in the Lands Tribunal Rules (“LTR”) (Cap. 17A), we maintain our view as set out in paragraph 7 of our letter dated 11.4.2006 (reproduced below for easy reference) -

“The deletion of Rule 4(5) does not mean that the Lands Tribunal will not afford opportunity to be heard to any party. That is indeed a fundamental precept of natural justice, and the right to be heard is guaranteed under the Basic Law and the Hong Kong Bill of Rights. And one of the objectives of our present exercise is to synchronize our rules with those in the District Court and the High Court.”

5. Moreover, Rule 4(5) refers to opportunity affords to “*any party*” to an application to be heard. A *non-party* who wishes to intervene would have to apply to become a party in the first place, and Rule 4(5) does not give any guidance as to that. One would need to refer to Order 15, Rule 6 of the Rules of the High Court (Cap. 4A) relating to joinder of parties to consider whether the intervenor should be allowed to be joined as a party. Hence, one would need to refer to the Rules of the High Court in any event.

6. Further, the Bar Council’s suggestion that without Rule 4(5) a subtenant may not know that he has a right to apply to the Lands Tribunal fails to take into account the actual practice. Occupiers would receive a Notice to Occupiers before execution of writ of possession by the bailiff. That notice expressly invites occupiers claiming a right to remain in the premises to make application to the Tribunal.

7. Furthermore, with the implementation of the revised administrative procedures as from 21.2.2005 (i.e. Recommendation 1 of the Lands Tribunal Review), applicants for repossession of premises are encouraged to post the bilingual notices of proceedings before judgment is given. The new specimen form provided by the Tribunal for posting before judgment requires the applicant to give notice to the respondent and all persons in actual possession / occupation of suit premises, with

¹ **4. Interlocutory procedure**

(5) The Tribunal shall afford any party who gives notice that he wishes to be heard an opportunity to appear and be heard on the application.

the same invitation to occupiers to make application to the Tribunal as the Notice by bailiff. This procedure would ensure that a subtenant of the suit premises would know of his right to apply to the Lands Tribunal.

8. Notwithstanding the above, as the Bar Council has observed, Rule 4(5) has not been causing any real / operational problems to the litigants or the Judiciary. As such, we will retain it in the LTR.

Next Step

9. The Judiciary will proceed to finalise the draft Lands Tribunal (Amendment) Rules, and report back to the LegCo AJLS Panel before the end of this year.

With best regards,

Yours sincerely,



(Miss Vega Wong)
for Judiciary Administrator

c.c. Clerk of the AJLS Panel ✓