

立法會
Legislative Council

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LC Paper No. CB(2)2579/08-09
(These minutes have been seen
by the Administration)

Bills Committee on Legal Practitioners (Amendment) Bill 2009

**Minutes of the second meeting
held on Monday, 7 September 2009, at 4:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Dr Hon Margaret NG (Chairman)
Hon LAU Kong-wah, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Ronny TONG Ka-wah, SC
Dr Hon Priscilla LEUNG Mei-fun
- Members absent** : Hon Albert HO Chun-yan
Hon Miriam LAU Kin-ye, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Paul TSE Wai-chun
- Public Officers attending** : Department of Justice

Mr Ian Wingfield
Solicitor General

Ms Sherman CHAN
Senior Assistant Law Draftsman

Mr Christopher NG
Senior Government Counsel

Ms Peggy AU YEUNG
Senior Government Counsel

Ms Karmen KWOK
Government Counsel

- Attendance by invitation** : Hong Kong Bar Association
Mr Rimsky YUEN, SC
The Law Society of Hong Kong
Mr Huen WONG
President
Mr Peter Barnes
Chairman of Working Party on Higher Rights of Audience
Mr Ernest YANG
Member of Working Party on Higher Rights of Audience
Ms Joyce WONG
Director of Practitioners Affairs
Consumer Council
Mr Simon CHUI
Senior Legal Counsel
- Clerk in attendance** : Miss Flora TAI
Chief Council Secretary (2)3
- Staff in attendance** : Miss Winnie LO
Assistant Legal Adviser 7
Ms Amy YU
Senior Council Secretary (2)3
Mrs Fanny TSANG
Legislative Assistant (2)3

Action

I. Meeting with deputations and the Administration

[LC Paper Nos. CB(2)2427/08-09(01) and (02), CB(2)2210/08-09(02) - (04), CB(3)690/08-09 and LP 5004/4/1C XIII]

The Bills Committee received views from the two legal professional bodies and the Consumer Council on the Bill. The index of proceedings was attached at the **Annex**.

Action

- Admin** 2. The Administration was requested to -
- (a) consider amending "the Chairman of the Bar Council" in section 39E(4)(b) to "the Chairman of the Bar Association", to achieve consistency with the use of "the President of the (Law) Society" in section 39E(4)(a);
 - (b) revert to members on the applicability of "the six-year and the six-board" rules to the Higher Rights Assessment Board; and
 - (c) provide for the next meeting a table setting out the major recommendations made by the Working Party on Solicitors' Rights of Audience and the relevant policy considerations behind those recommendations, and how such recommendations/policies were reflected in the Bill.

The Bar 3. The Hong Kong Bar Association undertook to make a submission on the provisions of the Bill in one month's time.

Clerk 4. Members agreed that a review should be conducted on the proposed scheme on granting higher rights of audience to solicitors at an appropriate juncture, say around two years after its implementation. Members also agreed to refer the issue to the Panel on Administration of Justice and Legal Services for follow-up.

II. Any other business

5 The Bills Committee agreed to hold the next meeting on 6 October 2009 at 10:45 am.

6. The meeting ended at 6:32 pm.

**Proceedings of the second meeting of the
Bills Committee on Legal Practitioners (Amendment) Bill 2009
on Monday, 7 September 2009, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000605 - 000817	Chairman	Opening remarks	
000818 - 001445	Law Society of Hong Kong (Law Society) Chairman	Presentation of views [LC Paper No. CB(2)2427/08-09(01)]	
001445 - 001852	Hong Kong Bar Association (Bar Association) Chairman	<p>Presentation of views</p> <p>(a) the Bar Association had previously made submissions to the Working Party on Solicitors' Rights of Audience (the Working Party) and its position on the proposed grant of extended rights of audience to solicitors had remained unchanged. The Bar Association would provide a submission on the detailed provisions of the Bill in one month's time;</p> <p>(b) the Bar Council had appointed a special committee to review the Code of Conduct for the Bar. The Bar Association would comment on the draft Code of Conduct for Solicitor-advocates prepared by the Law Society after the special committee had completed its study in around end of this year; and</p> <p>(c) the Bar Association would be in a better position to comment on the advocacy training course after the Higher Rights Assessment Board (the Assessment Board) had made the relevant rules on the requirements for the sitting by applicants for higher rights of examinations and training in advocacy.</p>	The Bar (para 3 of minutes)
001853 - 002130	Consumer Council	Presentation of views [LC Paper No. CB(2)2427/08-09(02)]	
002131 - 002408	Chairman Law Society Administration	<p>The Law Society's undertaking to consider positively the Consumer Council's suggestion that the list of persons with higher rights of audience to be kept by the Council of the Law Society should include further information such as specialized areas and year of admission of the solicitors.</p> <p>The Chairman's suggestion that the list to be made available on the website of the Law Society should include hyperlinks to the websites of the solicitor-advocates. This would assist consumers in obtaining more information on the solicitor-advocates.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>The Administration's view that while it might be desirable for potential clients to obtain the additional information concerning the solicitor-advocates as suggested by the Consumer Council, it was not appropriate to include such information in the Bill, as such information was not directly relevant to their accreditation as solicitors with higher rights of audience.</p>	
002409 - 003438	<p>Dr Priscilla LEUNG Chairman Bar Association</p>	<p>In response to Dr Priscilla LEUNG's enquiries, the Chairman's advice that -</p> <ul style="list-style-type: none"> (a) the proposed section 73CA(2)(c)(i) provided that the Assessment Board might make rules on arrangements for appeal or review in respect of matters concerning assessments or examinations; and (b) under the proposed scheme, there was no quota on the number of solicitors who might be granted higher rights of audience. <p>Dr LEUNG's concern that the proposed extension of higher rights of audience for solicitors would make the Bar a less attractive option for fresh law graduates; and her enquiry on whether consideration would be given to relaxing some of the restrictions currently imposed on the barrister profession, such as the referral system.</p> <p>The Bar Association's response that -</p> <ul style="list-style-type: none"> (a) it had thoroughly considered the issues raised by Dr LEUNG and had come to the view that the system of an independent referral Bar, which was an essential attribute of Hong Kong's legal system, should be preserved. The Bar considered that barristers should meet the challenge by enhancing their professionalism in advocacy work and improving the quality of their services rather than branching into other areas of work; (b) drawing reference to the experience in the United Kingdom which showed that only a relatively small percentage of solicitors had acquired and exercised higher rights of audience, it was expected that the proposed extension of higher rights of audience would not have significant impact on young barristers; and (c) the Bar Association believed that new entrants with aspiration for advocacy work would still choose to join the barrister profession. The Bar Association had set up the Bar Scholarship to encourage bright law graduates to join the Bar by providing them with financial incentive and/or assistance during pupillage. 	

Time Marker	Speaker(s)	Subject(s)	Action required
003439 - 004334	Dr Priscilla LEUNG Chairman Bar Association	<p>Members agreed on the need to conduct a review on the proposed scheme at an appropriate juncture, say around two years after its implementation. Members also agreed to refer the issue to the Panel on Administration of Justice and Legal Services for follow-up.</p> <p>Dr Priscilla LEUNG's view that barristers should be allowed to accept instructions directly from lay clients on the Mainland for provision of legal advice.</p> <p>The Bar Association's advice that it was stipulated in Annex 14 to the Code of Conduct for the Bar that barristers could accept instructions from overseas lay clients or lawyers for provision of legal advice and professional work in connection with any international arbitration proceedings in Hong Kong.</p>	Clerk (para 4 of minutes)
Administration's briefing on the provisions of the Bill [with reference to the marked-up copy of the relevant provisions to be amended by the Bill (LC Paper No. CB(2)2210/08-09(02))]			
004335 - 004729	Chairman Administration	<u>Clause 3 - Interpretation</u>	
004730 - 005333	Mr LAU Kong-wah Bar Association Law Society Chairman Administration	<p><u>Clause 4 - Part IIIB added</u></p> <p><i>The proposed section 39F</i> (members of the Assessment Board)</p> <p>Mr LAU Kong-wah's invitation of the views of the two legal professional bodies on the proposed section 39F(1) of the Bill which did not provide for any cap on the maximum number of terms of re-appointment for members of the Assessment Board.</p> <p>The Bar Association's response that it was the initial view of the relevant committee under the Bar Council that a cap should be placed on the maximum number of terms of re-appointment, subject to the Bar's submission in a month's time.</p> <p>The Law Society's response that it would consider the issue with reference to the practice of similar boards.</p> <p>The Administration's response that -</p> <p>(a) the provision for a three-year term of office without any express cap on re-appointment was a standard provision for boards and committees; and</p> <p>(b) while there was the general governmental rule that a person should not sit on an advisory body for more than six years, it was considered desirable to retain more flexibility in the hands of the Chief Justice (CJ) to decide on the</p>	The Bar/ The Law Society

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>appointment of members of the Assessment Board. It might be inflexible and inhibiting in some circumstances if CJ was precluded from appointing a member for a period longer than six years.</p>	
005334 - 005654	<p>Chairman Administration Mr LAU Kong-wah</p>	<p><i>The proposed section 39E</i> (Composition of the Assessment Board)</p> <p>Briefing by the Administration</p>	
005655 - 005725	<p>Chairman Administration</p>	<p>The Administration was requested to consider amending "the Chairman of the Bar Council" in section 39E(4)(b) to "the Chairman of the Bar Association", to achieve consistency with the use of "the President of the (Law) Society" in section 39E(4)(a).</p>	<p>Admin (para 2 of minutes)</p>
005726 - 010458	<p>Mr LAU Kong-wah Administration Chairman Dr Priscilla LEUNG</p>	<p>Mr LAU Kong-wah's enquiry as to whether the Assessment Board was covered by "the six-year and the six-board" rules in the appointment of non-official members to public sector advisory and statutory bodies (ASB), (i.e. a non-official member of an ASB should not serve for more than six years in any one capacity, or as a member on more than six boards/committees).</p> <p>The Administration's response that -</p> <p>(a) "the six-year and the six-board" rules were general practice rather than statutory rules and there was no definitive scope of ASBs to which the rules applied;</p> <p>(b) on the one hand, it might be said that the Assessment Board was covered by the rules in the sense that it was a statutory body. But on the other hand, it was noted that unlike other ASBs, members of the Assessment Board were appointed by CJ rather than the Chief Executive, which might mean that the Assessment Board would not be regarded as being covered by the rules; and</p> <p>(c) the Administration would further consider the issue and revert to members as appropriate.</p> <p>The Chairman's view that the application of "the six-year and the six-board" rules to the Assessment Board would unnecessarily complicate the appointment process, as CJ was already required under section 39E to consult the President/Chairman of the two legal professional bodies and the Secretary for Justice before making an appointment of members under section 39E(3)(b)(ii)(iii) and (iv). The rules might also be too restrictive in appointing serving or former judges to the Assessment Board in view of the limited pool of eligible candidates.</p>	<p>Admin (para 2 of minutes)</p>

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>Mr LAU Kong-wah's view that "the six-year and the six-board" rules should apply to the appointment of the lay member under section 39E(3)(v).</p> <p>Dr Priscilla LEUNG's view that a cap should be placed on the maximum years of service of members of the Assessment Board.</p>	
010459 - 010614	Administration Chairman	<p><i>The proposed section 39F</i> (members of the Assessment Board)</p> <p>Briefing by the Administration</p>	
010615 - 010735	Administration Chairman	<p><i>The proposed section 39G</i> (proceedings of the Assessment Board)</p> <p>Briefing by the Administration</p>	
010736 - 010956	Mr LAU Kong-wah Administration Chairman	<p>In response to Mr LAU Kong-wah's enquiries, the Administration's clarification that except in the case of a decision to make rules under section 73CA, all other decisions of the Assessment Board were decided by a majority of the members present and voting on that matter, i.e. abstention votes were not counted (section 39G(3)(b)), and the chairperson had an original vote and a casting vote (section 39G (4)).</p>	
010957 - 012639	Chairman ALA7 Administration Mr LAU Kong-wah Law Society Bar Association Mr Ronny TONG Dr Priscilla LEUNG	<p>Briefing by the legal adviser on her letter dated 7 September 2009 to the Administration seeking clarification on whether it was necessary to specify that the quorum provided in section 39G(1) must include the chairperson or an eligible-person member acting as the chairperson [the letter was issued to members vide LC Paper No. CB(2) 2429/08-09(01) on 8 September 2009].</p> <p>The Administration's response that -</p> <p>(a) section 39G(1)(a) and (b) was to ensure that the two legal professional bodies were represented at every meeting of the Assessment Board; and</p> <p>(b) the Administration did not see the need to expressly provide that the quorum must include the chairperson, as it was anticipated that the chairperson would not call a meeting at a time when he was not able to attend.</p> <p>The Chairman's view that given that the standard of advocacy of solicitor-advocates was a matter of prime concern to the Judiciary, it was inconceivable that serving/former judges sitting on the Assessment Board would allow a situation to occur where no member of the Judiciary was present at a meeting or that the chairperson would arrange a meeting in such a way that he was unable to attend it.</p>	

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		<p>Mr LAU Kong-wah, Mr Ronny TONG and Dr Priscilla LEUNG were of the view that express provisions should be added to the Bill to plug the loophole identified in the legal adviser's letter so as to avoid any future disputes.</p> <p>In response to the Chairman, the Administration's advice that there was no provision in the Bill specifying that another member could act as the chairperson in the absence of the latter. The Chairman's view that there should be a procedure for another person to chair a meeting in the absence of the chairperson. Such procedure could be made by the Assessment Board pursuant to section 39G(5).</p>	
012640 - 013447	Mr LAU Kong-wah Chairman Administration	<p>In response to Mr LAU Kong-wah's enquiry on the rationale for including a lay member on the Assessment Board, the Administration's advice that the provision originated from the recommendation of the Working Party in the Final Report. It was also consistent with the policy of including lay members in statutory bodies dealing with legal matters, examples of which included the Judicial Officers Recommendation Commission and the Legal Aid Services Council.</p> <p>The Chairman's comment that the objective of having a lay member was to ensure that apart from the interests of the legal profession, the interests of the wider community were also taken into account in the deliberations of the Assessment Board.</p> <p>Mr LAU queried the reason for not including the lay member in the quorum for a meeting of the Assessment Board, having regard to his important role.</p>	
013448 - 013610	Chairman Administration	<p><i>The proposed section 39H</i> (Application to the Assessment Board for higher rights of audience)</p> <p>Briefing by the Administration</p>	
013611 - 014026	Administration Chairman Bar Association Law Society	<p><i>The proposed section 39I</i> (Eligibility requirements)</p> <p>Briefing by the Administration</p> <p>In response to the Chairman, the two legal professional bodies' confirmation of their agreement with the eligibility requirements set out in the section.</p>	
014027 - 014132	Administration Chairman	<p><i>The proposed section 39J</i> (Further requirements concerning application)</p> <p>Briefing by the Administration</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
014133 - 014405	Mr LAU Kong-wah Law Society Chairman Bar Association	<p>Mr LAU Kong-wah's invitation of the two legal professional bodies' views on the proposed section 39J(3) in relation to the number of period(s) in each calendar year during which applications for higher rights of audience might be made.</p> <p>The two legal professional bodies' view that Assessment Board should have the flexibility to determine the number of period(s) during which applications might be made, having regard to relevant factors such as number of applications and resources of the Assessment Board.</p>	
014406 - 020036	Mr Ronny TONG Chairman Bar Association Administration Mr LAU Kong-wah Law Society	<p>Section 39H(2) -</p> <p>In response to Mr Ronny TONG's enquiry, the Bar Association's response that in respect of applications for higher rights of audience for both civil and criminal proceedings made under section 39H(2)(c), the Assessment Board had the discretion to grant the applicants higher rights of audience for only civil proceedings or criminal proceedings.</p> <p>The Law Society's suggestion of adding the word "or" after the semicolon in section 39H(2)(a) and (b) to improve the clarity of the clause. The Administration's explanation that in line with current drafting practice, as the phrase "one of the following classes of proceedings" was used in section 39H(2), it was not necessary to use the word "or".</p> <p>Section 39I -</p> <p>Mr Ronny TONG's concern that the eligibility requirements under section 39I did not include experience in advocacy work before the courts which should be a critical factor of consideration in the grant of higher rights of audience.</p> <p>The two legal professional bodies' made the points that -</p> <ul style="list-style-type: none"> (a) advocacy encompassed the acts of speaking and writing in support of a position; and (b) the Working Party recommended in its Final Report that the Assessment Board should be given a degree of latitude in determining what amounted to relevant litigation and advocacy experience in the light of the circumstances of each application. <p>The Administration's response that the eligibility requirements under section 39I were the threshold requirements only. In addition to satisfying these threshold requirements, an applicant should also satisfy the conditions for granting application set out under</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>section 39L, including experience and competence in litigation and advocacy, whether written or oral. The Administration stressed that while the Assessment Board was given some measure of discretion in assessing applications, it must have regard to the applicant's litigation and advocacy experience in granting higher rights of audience.</p> <p>Mr Ronny TONG remained concerned that experience in advocacy work before the courts was not a prerequisite for granting higher rights of audience.</p> <p>The Chairman's view that under the proposed scheme, the Assessment Board would play the pivotal role of serving as the gatekeeper of the standard of advocacy before the courts. While it was important to ensure that the Assessment Board could fulfill its role effectively under the Bill, she did not consider it appropriate to prescribe rigid assessment criteria in the Bill.</p> <p>The Administration was requested to provide for the next meeting a table setting out the major recommendations made by the Working Party and the relevant policy considerations behind those recommendations, and how such recommendations/policies were reflected in the Bill.</p>	<p>Admin (para 2 of minutes)</p>
020037 - 020203	<p>Chairman Mr Ronny TONG Administration Mr LAU Kong-wah</p>	<p>Date of next meeting</p> <p>Extending a welcome to the two legal professional bodies and the Consumer Council to attend the future meetings of the Bills Committee.</p>	<p>Clerk</p>