

立法會
Legislative Council

LC Paper No. CB(2)2564/99-00
(These minutes have been seen
by the Administration and
cleared with the Chairman)

Ref : CB2/BC/28/98

Legislative Council
Bills Committee on Legal Practitioners (Amendment) Bill 1999

Minutes of the seventh meeting
held on Thursday, 1 June 2000 at 4:30 pm
in Conference Room B of the Legislative Council Building

Members Present : Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Dr Hon LEONG Che-hung, JP
Hon Jasper TSANG Yok-sing, JP
Hon Ambrose LAU Hon-chuen, JP

Member Absent : Hon Ronald ARCULLI, JP

Public Officers Attending : Mr Stephen WONG
Deputy Solicitor General

Mr W B MADDAFORD
Senior Assistant Law Draftsman

Miss Agnes CHEUNG
Senior Government Counsel

Ms Carmen CHU
Senior Government Counsel

Attendance by Invitation : Hong Kong Bar Association

Mr Allan LEONG, SC

Mr Anselmo REYES

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Mr Paul WOO
Senior Assistant Secretary (2)3

Action
Column

I. Matters arising

Exemption of Bachelor of Laws (LLB) students from the new criteria for admission as barristers (proposed section 74B in new clause 18)
(LC Paper No. CB(2)2150/99-00(05) - 12th revised draft Committee Stage amendments (CSAs))

Assistant Legal Adviser referred members to the transitional provision in the revised draft CSAs (the proposed section 74B in new clause 18), which proposed that the deadline of application for admission as a barrister under the existing admission criteria in section 27 be extended to 31 December 2003. She pointed out that under this transitional arrangement, the exemption from the new admission requirements would not apply to students who, at the time of enactment of the Bill, had been enrolled or registered in or offered a place in the first year of the LLB in the UK commencing in September 2000. Students who would start pursuing the external LLB in Hong Kong this year would also not be covered.

2. Members agreed that the position held by the Bills Committee was that transitional arrangement which provided for exemption from the new admission criteria should also apply to the above categories of students. Members considered that the deadline proposed in the new section 74B should be put back to 31 December 2004.

3. The Administration agreed to prepare a new CSA to substitute "31 December 2003" in proposed section 74B with "31 December 2004".

Update on the number of students pursuing UK courses
(LC Paper No. CB(2)2150/99-00(04) - Paper prepared by the Administration)

4. Members noted from the Administration's paper that as at the end of May 2000, the updated estimated number of Hong Kong students pursuing legal studies in the UK was 176. The estimated number of students in Hong Kong doing UK external courses was 2 812.

General powers of the Court of Appeal in dealing with appeal against an order of a Solicitors Disciplinary Tribunal (SDT)

(LC Paper No. CB(2)2150/99-00(02) - Paper prepared by the Administration)

5. In response to the queries raised by members at the last meeting, Deputy Solicitor General (DSG) advised that matters relating to appeals to the Court of Appeal were governed by Order 59 of the Rules of the High Court. Order 59 Rule 11(1) provided that on the hearing of any appeal the Court might, if it saw fit, make any such order as could be made in pursuance of an application for a new trial, i.e. the court below would try the matter again, or the Court might set aside a verdict, finding or judgment of the court below. In the present context, the court below would be the SDT. The Court of Appeal might make a decision based on the material submitted at the time of application of appeal, i.e. where there would be no new submission or admission of new evidence. The Court might decide that the appeal should be by way of rehearing. This would be applicable where new evidence was allowed to be submitted. The Court might also decide that there should be a new trial. The other party to the application might contest application to submit new evidence or an application for a new trial.

6. DSG added that under the law as amended both the Council of the Law Society and the solicitor concerned would have the right to appeal against an order of a SDT.

7. Mr Albert HO enquired about the threshold which needed to be satisfied for the Court of Appeal to order a new trial. DSG replied that the granting of an order of a new trial was discretionary, and the discretion must be based on sound principles and could not be arbitrarily exercised. The circumstances in which the Court of Appeal might order a new trial were summarized in paragraph 5 of the Administration's paper. These included, inter alia, situations where the Court was satisfied that there was a substantial miscarriage of justice or misdirection of the court below, or where new evidence, which carried substantial weight but not available at the time of the trial, had since been discovered.

8. The Chairman added that as a general rule, the Court would apply very strict criteria in respect of admission of new evidence for the purpose of an appeal.

Quota of four admissions in any period of 12 months under section 27A

(LC Paper No. CB(2)2150/99-00(03) - Paper prepared by the Administration)

9. DSG briefed members on the Administration's paper which explained the criteria for selecting the counsel of the Department of Justice in the event that more than four such counsel sought admission as barristers pursuant to section 27A of the Legal Practitioners Ordinance at the same time. He said that the Department did not actually select the counsel who would seek admission under section 27A. Counsel were free to apply for admission as and when they saw fit and the Department was not involved in the admission process apart from supplying necessary confirmation of relevant experience and years of service of the applicants if requested. Each

application for admission made to the High Court would be assigned a "Miscellaneous Proceedings Number" which would be relied on to determine the priority of the application. The Bar Association, on its part, would scrutinize the documents submitted in support of the application for admission and ascertain if they complied with the requirements of section 27A. In the event the conclusion was negative, the Bar Association might oppose the application.

10. DSG further advised that the calculation of any period of 12 months was not based on calendar year. The 12-month period for an application submitted on a specific date would count from the same date of the preceding year. Therefore, unless more than four counsel of the Department should decide to seek admission in the same month, the quota of four admissions for any particular period of 12 months was unlikely to be exceeded. If this should happen, priority would be decided on the basis of the Miscellaneous Proceedings Numbers.

11. Having regard to the advice given by the Administration at the last meeting that there were only 13 counsel in the Department of Justice who would have accrued the right to apply for admission under section 27A at the time of repeal of the section (i.e. November 2001), and that the quota of four admissions had never been filled in the past, members sought the views of the Administration and the Bar Association on whether or not it was necessary to retain the quota in the transitional provision in proposed section 74C under new clause 18.

12. DSG said that the Administration had no strong view on this point as the removal of the quota should not affect the operation of the Department of Justice.

13. In response to the above enquiry raised by members, Mr Alan LEONG said that the restriction of four admissions in any period of 12 months imposed under section 27A(2) had been in existence since the enactment of section 27A in 1989. It was intended to be a mechanism for controlled admission of experienced counsel of the Department of Justice as barristers. It also enabled the Bar Association to make a reasonable forecast of how many people would be joining the private Bar in any given period of 12 months. He said that the Bar Association did not see any significant changes in circumstances which justified departing from the existing arrangement by abolishing the quota of admissions. He said that the view of the Bar Association was that the quota should stay.

14. The Chairman concluded that the Bills Committee did not wish to insist on whether the limitation of four admissions in section 27A should or should not be removed from the transitional provision. She suggested that the matter should be decided between the Administration and the Bar Association. She reminded the Administration to notify the Bills Committee in case there were further changes to the transitional provisions in proposed section 74C. Members endorsed the Chairman's view.

II. Draft rules governing the admission of barristers and other areas such as pupillage and issuance of practising certificates
(LC Paper No. CB(2)2096/99-00(01) - Draft rules submitted by the Bar Association)

15. The Chairman drew members' attention to the draft Rules attached in LC Paper No. CB(2)2096/99-00(01). She said that although a detailed scrutiny of the draft Rules would be done at a later stage when the relevant subsidiary legislation was introduced into the Legislative Council, a preliminary introduction on the content of the draft Rules would benefit members in getting a general preliminary idea of what the subsidiary legislation would be like in implementation. At the invitation of the Chairman, Mr Anselmo REYES briefed members on the draft Rules prepared by the Bar Association.

16. Mr REYES said that the Barristers (Qualification for Admission and Pupillage) Rules would be made by the Bar Council under section 72AA of the Legal Practitioners Ordinance. He advised that upon the enactment of the Amendment Ordinance, there would be two streams for admission as barristers in Hong Kong, namely one for local Postgraduate Certificate in Laws (PCLL) graduates (the local route) and the other for overseas lawyers (the overseas route). For people seeking admission through the local route, upon successful completion of the PCLL, they should apply for a certificate of eligibility for pupillage. Having completed at least six months of the period of approved pupillage, the person should apply to the Bar Council for a certificate of qualification for admission as a barrister, followed by the serving of a notice of motion for admission as a barrister in the High Court. The Court then admitted the person as a barrister.

17. For applications through the overseas route, the qualified overseas lawyer should first apply for a certificate of eligibility as an overseas lawyer. To be qualified to apply for such a certificate, the overseas lawyer should have practised for at least three years in his jurisdiction of admission and was a person of good standing in his jurisdiction of admission. Having received the certificate, he would be required to sit an examination, which would consist of a General Part and a Special Part. The subjects for the examination were listed in the Rules. After passing both parts of the examination, the applicant should apply for a certificate of eligibility for pupillage and then proceed further as under the local admission route.

18. In reply to the Chairman, Mr REYES said that a person who sought admission as a barrister could apply to the Chief Justice (CJ) for a reduced period of approved pupillage. Normally, the CJ would consult the Bar Council on an application for reduction of pupillage, having regard to factors such as the sufficiency of the person's advocacy experience etc. In some cases, the period of approved pupillage could be reduced to less than six months. However, for applicants who were lawyers from another jurisdiction whose legal system was different from that of Hong Kong, it was unlikely that reduction of pupillage would be granted because the very purpose of pupillage was to familiarize lawyers with the local system. He added that provisions

governing pupillage were contained in part III of the draft Barristers (Qualification for Admission and Pupillage) Rules.

19. Concerning the examination to be sat by applicants seeking admission through the overseas route, Mr REYES said that the Bar Council had sought the views and assistance from the Law Society and the Faculty of Law of the University of Hong Kong in designing the examination. He considered that there should be sufficient time for the Bar Council to finalize the relevant arrangements for the examination before the new section 27 came into force in November 2001.

20. The Chairman asked whether the draft Rules had been approved by the CJ. Mr REYES replied that while the Bar Council had largely endorsed the draft version of the Rules, the finalized version had yet to be submitted for the consideration of the CJ. He added that the Rules attached in LC Paper No. CB(2)2096/99-00(01) would be made under different rule-making authorities in the Legal Practitioners Ordinance. For example, the Barristers (Qualification for Admission and Pupillage) Rules would be made by the Bar Council under section 72AA with the prior approval of the CJ, whereas the Barristers (Admission) Rules would be made by the CJ under section 72.

21. Mr REYES also informed members that certain provisions in the draft Rules would be tidied up to take into account some of the new amendments to the Bill which had been agreed by the Bills Committee.

22. The Chairman thanked representatives from the Bar Association to attend the meeting and brief members on the relevant issues.

III. Legislative timetable

23. The meeting agreed that pending the finalized CSAs to be prepared by the Administration, the Bills Committee should make a report on the Bill to the House Committee on 9 June 2000 and seek the latter's support that the Second Reading debate on the Bill be resumed on 21 June 2000.

24. The meeting ended at 5:30 pm.

(Post-meeting note - The Bills Committee consulted the House Committee on 9 June 2000 and the Second Reading debate on the Bill was resumed at the Council meeting on 21 June 2000.)