

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2549/99-00  
(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 fourth meeting**  
**held on Monday, 13 March 2000 at 8:30 am**  
**in Conference Room B of the Legislative Council Building**

**Members Present** : Hon Margaret NG (Chairman)  
Dr Hon LEONG Che-hung, JP  
Hon Albert HO Chun-yan

**Members Absent** : Hon Jasper TSANG Yok-sing, JP  
Hon Ambrose LAU Hon-chuen, JP  
Hon Ronald ARCULLI, JP

**Public Officers Attending** : Mr Stephen WONG  
Deputy Solicitor General

Mr Michael SCOTT  
Senior Assistant Solicitor General

Mr W B MADDAFORD  
Senior Assistant Law Draftsman

Miss Agnes CHEUNG  
Senior Government Counsel

Ms Kitty FUNG  
Government Counsel

**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

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Action  
Column

**I. Matters arising**

(LC Paper Nos. CB(2)1315/99-00(03) and (04) - Letters from the University of Hong Kong and the City University of Hong Kong; and  
(LC Paper No. CB(2)1354/99-00(01) - Letter from the Administration)

Admission of barristers (clause 7)

The Chairman drew members' attention to the written replies from the University of Hong Kong and the City University of Hong Kong providing information on the Postgraduate Certificate in Laws course (PCLL) as requested by the Bills Committee (LC Papers Nos. CB(2)1315/99-00(03) and (04)).

2. In its response, the University of Hong Kong had pointed out that having referred to the number of UK qualified barristers admitted to practise in Hong Kong in recent years, the university was of the view that there should be no difficulty for it to absorb the anticipated increase in the number of applicants for the PCLL, provided that the present number of student places and the level of funding provided by the University Grants Committee (UGC) was not reduced. However, it could not guarantee that PCLL places could be offered to all returning UK law graduates as admission was on a competitive basis based on academic merits. So far as the Faculty of Law PCLL was concerned, places were only guaranteed for the HKU Bachelor of Laws (LLB) graduates who obtained a first or second class degree. Regarding the non-UGC funded PCLL run by the School of Professional and Continuing Education (SPACE), guaranteed places were offered for students passing the Common Professional Examination at their first attempt and those passing the London (External) LLB offered by SPACE with a first or second class degree.

3. According to the City University of Hong Kong, on the other hand, there was no quota of PCLL places for any specific category of students. The number of intake could be increased by offering full-fee paying PCLL places.

4. At the invitation of the Chairman, Deputy Solicitor General (DSG) explained the flow-chart attached in Annex B of the Administration's paper (LC Paper No.

CB(2)1354/99-00(01)) which illustrated how overseas law students would be affected by the new mechanism for admission of barristers as proposed under section 27(1) (assuming that the new admission criteria took effect not earlier than 1 November 2001). It showed that those studying in the UK in the third year of LLB in 1999/2000 would not be affected by the new admission requirements as they would be able to complete the Bar vocational course in the UK in 2000/2001 and then apply to be called to the Bar in Hong Kong under the existing admission criteria before November 2001. However, those studying in the second or the first year of LLB in the UK in 1999/2000 would be bound by the new admission criteria. They would have to either attend the PCLL in Hong Kong after completing the LLB in the UK, or alternatively undertake the English Bar vocational examinations in the UK and then come back to Hong Kong to sit for the examinations for foreign lawyers set by the Bar Council, before they could gain admission as barristers in Hong Kong.

5. DSG added that the Administration was still awaiting information from the overseas universities on the estimated number of Hong Kong students now studying law in other common law jurisdictions.

6. Dr LEONG Che-hung reiterated his view that the Bill should provide transitional arrangements for students who were already pursuing legal studies in the UK or had been enrolled in legal studies at the time of enactment of the Bill. He said that these students had an expectation that the existing right to gain admission to the local Bar on the basis of UK qualification would continue to apply to them. Hence, it would create unfair hardship to them if they were denied of such right in the middle of their course, and were forced to come back to Hong Kong to study the PCLL only to find that a PCLL place was not available to them.

7. The Chairman asked when should the new admission criteria under the proposed section 27(1) take effect if local law students studying in their first year of LLB in the UK in 1999/2000 were to be exempted from the new admission requirements.

8. DSG replied that the commencement date would have to be deferred to November 2003 or a date later than that.

9. DSG said that local students studying law in UK should not be treated more favourably than others, e.g. those who were now doing an external LLB in Hong Kong. Law students in Hong Kong, including external LLB students, could go to UK to study the English Bar vocational course. Therefore, a transitional provision, if it was to be introduced, should also cover the external LLB students.

10. The Chairman said that she understood that it was not very common for local external LLB students to attend the Bar vocational school in the UK. She requested the Administration to provide information, if possible, on the number of students who were doing an external LLB in Hong Kong, the criteria for admitting these students to

Action  
Column

Adm the UK Bar vocational course and the percentage of these students who had actually enrolled for the UK Bar vocational course in the past.

11. The Chairman also asked the Administration to consider the following proposals having regard to the views expressed by members of the Bills Committee -

(a) deferring the commencement of the new section 27(1) to a date not earlier than November 2003; or

(b) including an exemption clause in the Bill to specify that the new admission criteria under proposed section 27(1) did not apply to students who were pursuing, or had enrolled in, an LLB study in the UK at the time of passage of the Bill.

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12. On the general question of enhancing the quality of legal practitioners in Hong Kong, the Chairman and Mr Albert HO opined that the Administration should conduct a review to examine issues in a broader context, for example, whether or not the long-term policy concerning training of legal professionals should have the effect of discouraging local law students from pursuing their study overseas, and the availability of PCLL places sufficient to satisfy the needs of local versus overseas law graduates etc. Regarding places for the PCLL, the Chairman pointed out that of the 170 places of the HKU Faculty PCLL, about 135 - 140 places were guaranteed for the university's LLB graduates. Hence, there was apparently an unfair competition between local and overseas graduates for the PCLL places.

13. DSG responded that relevant matters relating to the long-term development and improvement of legal education and training in Hong Kong would be considered in detail in a comprehensive review currently conducted by the Steering Committee on Legal Education which consisted of representatives of the two local law schools, the legal professional bodies and the Department of Justice.

14. The Chairman reminded members that the Panel on Administration of Justice and Legal Services had requested the Department of Justice to brief the Panel at a meeting to be held on 21 March 2000 on a recently reported proposal of the UGC to withdraw funding for the PCLL programme run by the two local universities. She encouraged members of the Bills Committee to participate in the discussion of the subject.

Administration's response to the points raised at the meeting on 28 February 2000

*Proposed section 8AAA (clause 3)*

15. The Administration advised that having considered members' views expressed at the meeting on 17 February 2000 on the new section 8AAA, the Law Society agreed that it would be more appropriate to replace the reference to "summon" any person

with "question". Furthermore, for the purpose of assisting the Council of the Law Society in deciding whether or not a complaint should be referred to the Tribunal Convenor of the Solicitors Disciplinary Tribunal (SDT) Panel, the Law Society had also agreed that the proposed power of questioning a person in order to gather evidence in respect of matters involved in the complaint should be given to an inspector appointed by the Council of the Society under the existing section 8AA. The Administration was preparing the relevant Committee Stage amendments (CSAs) relating to this proposed section.

Adm 16. The Chairman requested the Administration to clarify in writing the roles of an inspector appointed under section 8AA as opposed to that of a prosecutor appointed under the new section 8AAA, whether the two should co-exist and if so how the two systems would operate together upon the enactment of the Bill.

*Right of appeal of the Law Society against an order made by a SDT (clause 5)*

Adm 17. DSG said that the Administration would provide information on right of appeal of the Law Society in England and Wales against order of a SDT for the consideration of the Bills Committee.

*The Bar Association's proposal to repeal existing section 27A and Schedule 1 to the Legal Practitioners Ordinance*

18. DSG informed members that the Administration agreed to the Bar Association's view that the existing section 27A should be repealed so as to create a level playing field for the admission of lawyers qualified in other jurisdictions to the Bar in Hong Kong. The Administration was considering the appropriate transitional arrangements to be provided for counsel in the Department of Justice who would be affected by the proposed repeal. He added that Schedule 1 to the Ordinance would need to be retained temporarily after the repeal of section 27A because there were cross references to Schedule 1 in various other Ordinances. Schedule 1 would be repealed after all the transitional arrangements had been implemented.

*Local experience required of medical practitioners and legal practitioners*

19. DSG said that having regard to the remarks made by Dr LEONG Che-hung at the meeting on 28 February 2000, the Administration agreed to withdraw the statement in paragraph 4 of item (c) of the Administration's letter dated 15 February 2000 (previously circulated vide LC Paper No. CB(2)1099/99-00(03)) that "medical practitioners, unlike legal practitioners, had a common convention in their practice so that their knowledge could be applied universally without the need to adapt to local conditions".

*References to "permanent resident"; "has resided in Hong Kong"; "has been ordinarily resident in Hong Kong"; and "has been physically present in Hong Kong"*

20. DSG said that the expression "permanent resident of the Hong Kong Special Administrative Region" was defined in Schedule 1 to the Immigration Ordinance. The concept of permanent resident, however, did not come into play in the requirements for admission of barristers under the new section 27(2)(b) as proposed in clause 7.

21. DSG further advised that either one of the three requirements specified in the new section 27(2)(b) was sufficient for the purpose of fulfilling the residence requirement for admission as barristers. The requirements followed that for the admission of solicitors. He explained that "has resided in Hong Kong" for at least three consecutive months immediately before the date of application indicated continuous residence, i.e. without departing from Hong Kong, but without any indication that the residence was of a continuing or permanent nature. The Administration was of the view that even quite short absences from Hong Kong could break a period of continuous residence. "Has been ordinarily resident in Hong Kong", on the other hand, was a term for which there was a common law interpretation. The definition was set out in the Immigration Department's Right of Abode Booklet as follows -

*"A person is ordinarily resident in Hong Kong if he remains in Hong Kong legally, voluntarily and for a settled purpose (such as for education, business, employment or residence etc.), whether of short or long duration."*

22. Mr Albert HO asked what was the difference between "reside" and "physically present".

23. In response, DSG said that whereas "reside" referred to a particular purpose of stay, "physically present" connoted actual presence without attaching any quality to that presence. He drew members' attention to the extracts from the relevant provisions in the Ordinances having references to "ordinarily resident" and "reside" or "residing" (Annex E and F of LC Paper No. CB(2)1354/99-00(01)) relating to admission and registration of professionals. Some examples were -

*Section 20(2) of Architects Registration Ordinance*

*"For the purposes of subsection (1)(c), if a registered architect has failed to reside in Hong Kong for a period of 2 years or more, the Board shall not consider him to be ordinarily resident in Hong Kong."*

*Section 19(2) of Engineers Registration Ordinance*

*"For the purposes of subsection (1)(c), if a registered professional engineer has failed to reside in Hong Kong for a period of 2 years or more, the Board shall not consider him to be ordinarily resident in Hong Kong."*

Section 19(2) of Housing Managers Registration Ordinance

*"For the purposes of section (1)(c), if it appears to the Board that a registered professional housing manager has been absent from Hong Kong for a continuous period of 2 years or more, the Board need not consider him to be ordinarily resident in Hong Kong."*

- Adm 24. DSG pointed out that there was no general statutory definition of "reside" in the Ordinances. He undertook to conduct a research to see if there was case law relevant to clarifying the meaning of the expression "has reside in Hong Kong".

**II. Clause-by-clause examination of the Bill**

Clause 2

25. DSG advised that the proposal to amend the definition of "Hong Kong firm" by repealing the expression "resident in Hong Kong" served to clarify that all the partners of a Hong Kong law firm had to be solicitors. Under the interpretation section, "solicitor" was defined as "a person who is enrolled on the roll of solicitors and who, at the material time, is not suspended from practice."

- Adm 26. Dr LEONG Che-hung asked whether, by operation of the amended definition of "Hong Kong firm", a law firm would cease to be a Hong Kong firm if one of the partners was suspended from practice as a solicitor. The Administration agreed to clarify this point in writing.

Clauses 3, 5 and 7

27. Members would further examine these clauses in detail after receiving the CSAs from the Administration.

Clause 6

- Adm 28. DSG informed members that having consulted the Law Society, a CSA would be proposed to amend clause 6 to provide for the right of the solicitor to apply for an order of a SDT or the Court of Appeal to prohibit the publishing of a summary of the finding and order of a SDT and the name of the solicitor in any publication produced by the Law Society.

Clause 8

29. DSG said that the proposed section 28 was introduced as a consequential amendment resulting from amendments to section 27 on requirements for admission of

barristers.

30. Dr LEONG Che-hung enquired whether the Chief Justice (CJ) had the discretionary power to admit barristers without regard to any of the requirements for admission specified under the new section 27(1) and (2).

31. Assistant Legal Adviser said that section 28 only concerned the formalities for admission, i.e. a person should deposit the relevant documentary evidence with the Registrar of the High Court to show that he had satisfied the requirements specified under section 27(1) and (2). The power of the CJ under section 28 was only a power to except such formalities under suitable circumstances, not a general power to except any of the admission criteria specified in section 27.

#### Clause 9

32. The Chairman pointed out that a CSA to clause 9 might be necessary if it was decided that the existing section 27A should be repealed.

#### Clause 10

33. DSG said that at present barristers were not required by law to take out indemnity insurance before being issued with a practising certificate. Clause 10 required the payment of indemnity insurance premium as a prerequisite to the issue of a practising certificate. He added that the requirement for the taking out of professional indemnity insurance varied amongst different professions.

### **III. Any other business**

Adm 34. The Chairman requested the Administration to submit a revised set of draft CSAs for the Bills Committee's consideration as soon as possible.

### **IV. Next meeting**

35. The next meeting was scheduled for 31 March 2000 at 10:45 am.

36. The meeting ended at 10:45 am.

*(Post-meeting note - The Administration's responses to the points raised have been circulated vide LC Paper No. CB(2)1514/99-00(03))*

Legislative Council Secretariat

14 August 2000