

立法會
Legislative Council

LC Paper No. CB(2)2563/99-00
(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 sixth meeting
held on Saturday, 20 May 2000 at 9:00 am
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

Miss Agnes CHEUNG
Senior 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

I. Matters arising

(LC Paper No. CB(2)1626/99-00(01) - Letter from the Law Society of Hong Kong on proposed section 13(2A);
LC Paper No. CB(2)1658/99-00(01) - The Chairman's letter to the Law Society in response to CB(2)1626/99-00(01) and
LC Paper No. CB(2)1658/99-00(02) - Administration's letter enclosing a Consultation Paper on section 27A of the Legal Practitioners Ordinance)

Right to appeal of the Council of the Law Society against an order made by a Solicitors Disciplinary Tribunal (SDT) (proposed section 13(2A) under clause 5)

The Chairman pointed out that at the last meeting on 31 March 2000, members generally supported the revised proposal that the Council of the Law Society should be permitted to appeal against an order made by a SDT, subject to the leave of the Court of Appeal. As agreed by members, the Secretariat had requested the Law Society to provide some examples of "perverse" decisions of the SDT for the Bills Committee's consideration. The Society had responded to the request vide its letter dated 6 April 2000 (LC Paper No. CB(2)1626/99-00(01)).

2. The Chairman further informed members that she had subsequently written to the Law Society to express her views on the cases cited in the Society's letter. In her opinion, it appeared that the SDT's decision in those cases was perverse in the sense that the SDT had made a wrong order to dismiss a hearing on an erroneous view of law. The decision, however, did not amount to a perverse acquittal because it had not actually touched on the merits of the defence, and the facts as disclosed did not suggest that the solicitor whose conduct was the subject of the SDT would necessarily have been found guilty.

3. The Chairman nonetheless felt that there was valid ground for the Law Society to demand a right to appeal if it firmly believed that the existence of such a right was necessary for the satisfactory performance of its duties towards members of the public. Furthermore, as assured by the Society, the right would only be exercised sparingly under exceptional circumstances. She considered that the revised proposal to provide the Law Society Council with a right to appeal subject to leave of the Court of Appeal could achieve an appropriate balance.

4. Mr Albert HO said that while he supported the proposal in principle, he would like the Administration to clarify the circumstances under which the Court of Appeal, on hearing an application for leave for appeal by either party to the proceedings, might or might not order a re-trial of the case by another SDT. He pointed out that according to feedback from the profession, this was a significant concern expressed by a large number of solicitors.

5. On the point raised by Mr Albert HO, the Chairman requested the Administration to explain the general powers exercisable by the Court of Appeal in

dealing with an appeal against an order of a SDT, particularly in relation to the power of the Court to remit the case for re-hearing by another SDT; and whether a solicitor being the appellant could apply for a re-hearing.

Proposal to repeal section 27A on admission of counsel in Department of Justice

6. Deputy Solicitor General (DSG) briefed members on LC Paper No. CB(2)1658/99-00(02). The paper explained, inter alia, the objective of and background to the enactment of section 27A which provided that counsel working in the Department of Justice were eligible to apply for admission as barristers to practise in private, provided that they satisfied the requirements specified in section 27A(1)(a)-(e). Since its enactment, section 27A only applied to foreign lawyers qualified in the UK or a jurisdiction specified in Schedule 1 to the Legal Practitioners Ordinance.

7. DSG advised that the Administration had come to the view that in view of the proposed amendments to section 27 which enabled the section to comply with the fair and non-discriminatory obligations under the General Agreement on Trade in Services, section 27A should be repealed. The Administration was studying the issues involved and had prepared a Consultation Paper on the subject (a copy of the Consultation Paper was attached in LC Paper No. CB(2)1658/99-00(02)). The Administration's provisional view was that a transitional provision could be provided in the Bill so as to allow Government counsel who satisfied the requirements under section 27A(1)(a)-(d) before the repeal of section 27A (i.e. about November 2001) to apply for admission as barristers, but without having to fulfil the 12-month rule in section 27A(1)(e). That rule required an admittee to commence practice as a barrister in private practice within 12 months of admission. The Administration had proposed a Committee Stage amendment (CSA) to provide for the repeal of section 27A and the transitional arrangement (proposed section 74C under new clause 18 in the 11th (revised) draft of CSAs circulated vide LC Paper No. CB(2)2052/99-00(03) refer).

8. DSG further advised that the above transitional provision was supported by the Bar Association. In addition, all counsel in the Department of Justice who responded to the survey conducted by the Administration had not raised any objection to the proposed arrangement.

9. In response to the Chairman, DSG said that the proposed transitional provision would give counsel within the Department of Justice until November 2001 to fulfil the 7-year-service requirement under section 27A(1)(c). Under the transitional arrangement, a total of 13 counsel within the Department would have accrued the right before November 2001 and be eligible to apply for admission as barristers under section 27A. According to the new clause 18 of the Bill, qualified counsel could apply for admission at any time after the coming into effect of the relevant part of clause 18, without being subject to the 12-month rule in section 27A(1)(e). However, the admission would still be bound by the restriction of section 27A(2), i.e. not more than four persons could be admitted in any period of 12 months. DSG said that under

the proposed transitional mechanism, the accrued right of Government lawyers to be qualified for admission under section 27A before the repeal of the section could be preserved. Furthermore, the abolition of the 12-month rule could save these legal officers from being forced to make a career choice and leave Government service at a time not of their own choosing.

10. The Chairman said that because of the enactment of section 27A, qualified lawyers coming from foreign jurisdictions listed in Schedule 1 to the Ordinance have had a reasonable expectation that section 27A would provide one avenue of admission as barristers and they had acted on that expectation. She asked what was the reaction of this category of legal officers towards the proposed repeal of section 27A.

11. DSG responded that the Administration had conducted several rounds of consultation within the Department of Justice on the issue and counsel to whom section 27A applied did not object to the repeal.

12. Members generally agreed to the proposed repeal of section 27A.

13. Dr LEONG Che-hung enquired about the rationale of setting a quota of four admissions in any period of 12 months under the existing section 27A(2) and doubted whether it was fair to retain such restriction in the proposed transitional provision.

14. DSG replied that the historical background to the restriction in section 27A(2) was that the Administration expected that as a result of the enactment of section 27A, officers from the Government legal service might decide to join the private Bar. The limitation of a maximum of four admissions in any period of 12 months would ensure that the Government legal service could adjust smoothly to any change resulting from the transfer. He said that the Department of Justice did not select which counsel in the Department could seek admission under section 27A. Applications for admission were made by the eligible officers solely on their own initiative. Since the enactment of section 27A in 1989, the quota of four admissions had never been filled in any period of 12 months.

15. DSG added that while the Administration had no strong views on whether the quota should be included in the transitional arrangement, the Bar Association preferred the status quo. Counsel within the Department of Justice had been consulted and they were not against retaining the quota restriction in the transitional provision.

16. Dr LEONG Che-hung said that one could not rule out the possibility that more than four eligible counsel might apply at the same time for admission under section 27A. He opined that the Administration should explain the criteria for selecting the four applicants in that situation. He stressed that the criteria and the process for selection must be fair and in accordance with natural justice.

17. The Administration agreed to provide a written response after consulting the

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Adm Bar Association on the concern expressed by Dr LEONG.

II. Revised draft CSAs

(LC Paper No. CB(2)1958/99-00(02) - Administration's letter enclosing the 10th draft CSAs;

LC Paper No. CB(2)2052/99-00(02) - Assistant Legal Adviser's comments on the Chinese version of the 5th draft CSAs;

LC Paper No. CB(2)2052/99-00(03) - Administration's letter enclosing the English version of the 11th revised draft CSAs which incorporated Assistant Legal Adviser's comments made in a letter circulated vide LC Paper No. CB(2)2052/99-00(01); and

A marked-up copy of the Bill showing the 11th revised draft CSAs)

18. The Chairman invited Assistant Legal Adviser (ALA) to take members through the clauses in the 11th revised draft CSAs, making reference to the marked-up copy of the Bill tabled at the meeting as appropriate. Members noted the significant new amendments set out below.

Clause 1

19. Members noted that the draft CSA to clause 1 clarified that clause 15 of the Bill as well as the new clause 7A(1) which repealed section 27A(1)(e) and 27A(3) would commence immediately on publication of the Bill in the Gazette as an Amendment Ordinance. Clause 7 and the new clause 7A(2), together with the other related clauses as specified in new clause 1(3), would commence on a day to be appointed which would not be earlier than 1 November 2001. The remainder of the Amendment Ordinance would come into operation on a day to be appointed.

Clause 3

20. As suggested by members at the last meeting on 31 March 2000, the reference to "in accordance with procedural rules prescribed by the Council" in proposed section 8AAA had been deleted.

Clause 5(b)

21. It was now provided in proposed section 13(2A) that the Council of the Law Society might, with the leave of the Court of Appeal, appeal against an order of a SDT.

Clause 11(c)

22. Having regard to ALA's views expressed at the last meeting, the Administration had agreed to amend proposed section 31(1)(f) from "if he holds a current employed barrister's certificate" to "if he is an employed barrister within the meaning of section

31C(1)" to clarify the legislative intent.

Clause 12

23. Members noted that a new section 31C(3A) on the publication in the Gazette by the Bar Council of a list of the names and addresses of barristers who had obtained employed barrister's certificates had been added.

Clause 15

24. As suggested by members at the last meeting, the word "direct" before "conflict" in proposed section 72AAA had been deleted.

New clause 7A

25. The clause provided for the repeal of section 27A.

New clause 17

26. The clause provided for the repeal of section 72B consequential to repeal of Schedule 1 to the Legal Practitioners Ordinance.

New clause 18

27. The clause provided for -

- (a) in new section 74B, transitional provisions which exempted students enrolled or registered in, or had been offered a place in legal studies in the UK as at the time of enactment of the Bill from the new requirements for admission as barristers, by means of extending the time for seeking admission under the existing admission criteria to 31 December 2003. The proposed section 74B(c) extended the exemption to those pursuing external Bachelor of Laws degrees offered by institutions in the United Kingdom in Hong Kong; and
- (b) in new section 74C, transitional arrangements and savings of the accrued right of lawyers currently employed in the Department of Justice to apply for admission as barristers in Hong Kong under the existing section 27A notwithstanding the repeal of the section, subject to the existing quota of four admissions in any period of 12 months. The rule under the existing section 27A(1)(e) which required commencement of private practice as a barrister in Hong Kong within 12 months of admission would no longer apply to admission under the new section 74C.

New Clause 19

28. The clause provided for the repeal of Schedule 1 to the Legal Practitioners Ordinance concerning foreign qualified lawyers employed in the Department of Justice.

New clauses 20 to 23

29. These new clauses were consequential amendments to other Ordinances resulting from the repeal of Schedule 1.

30. Members endorsed the rest of the amendments proposed in the 11th revised draft of CSAs.

Chinese version of the draft CSAs

Adm 31. ALA explained her proposed amendments to the Chinese version of the 5th draft of CSAs (previously circulated vide LC Paper No. CB(2)2052/99-00(02)). The Chairman requested the Administration to consider ALA's comments in finalizing both the Chinese and English versions of the CSAs to achieve consistency.

32. Members endorsed the clauses of the Bill subject to the proposed CSAs agreed by the Bills Committee.

III. Any other business

Hong Kong students pursuing UK courses

Adm 33. The Chairman requested the Administration to provide the updated figures of the number of Hong Kong students pursuing legal studies in the UK and students doing UK external courses in Hong Kong.

Draft rules made by the Bar Council

34. Members agreed to invite representatives of the Bar Council to attend the next meeting to brief members on the present position regarding the preparation of the draft rules governing the admission of barristers in Hong Kong as well as the content of the draft rules.

IV. Next meeting

35. The next meeting was scheduled for 1 June 2000 at 4:30 pm.

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36. The meeting ended at 11:00 am.

(Post-meeting note - The Administration's responses to the issues raised at the meeting have been circulated vide LC Paper Nos. CB(2)2150/99-00(02) to (04))

Legislative Council Secretariat
23 August 2000