

立法會
Legislative Council

LC Paper No. CB(2)2503/99-00
(These minutes have been seen
by the Administration and
cleared with the Chairman)

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

Minutes of the first meeting
held on Monday, 24 January 2000 at 8:30 am
in Conference Room A of the Legislative Council Building

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

Members Absent : Hon Albert HO Chun-yan
Hon Ronald ARCULLI, JP
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, 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 Carmen CHU
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

Action
Column

I. Election of Chairman

Miss Margaret NG was elected Chairman of the Bills Committee.

II. Meeting with the Administration

(The Bill circulated vide LC Paper No. CB(3)1774/98-99; the Legislative Council Brief issued by the Department of Justice (ref : LP 272/00); the Legal Service Report on the Bill (ref : LS219/98-99) circulated vide LC Paper No. CB(2)2450/98-99)

Content of the Bill

2. Deputy Solicitor General (DSG) explained to members the purpose of the Bill. He said that the Bill sought to make miscellaneous amendments to the Legal Practitioners Ordinance, Cap. 159 to increase the efficiency and effectiveness of the two self-regulating legal professional bodies, i.e. the Hong Kong Bar Association (the Bar) and the Law Society of Hong Kong (the Law Society), and at the same time align the provision of professional legal services with the general obligations of the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO). Such obligations required that the criteria for the provision of professional services had to be objective, reasonable, non-discriminatory and standards-based.

3. DSG then briefed members on the major provisions in the Bill as follows -

For solicitors

(a) Clause 2 amended the definition of "Hong Kong firm" to clarify that all the partners of the firm had to be enrolled on the roll of solicitors in order

to avoid the misinterpretation that only those partners who were resident in Hong Kong were required to be solicitors. The ambiguity in the existing definition had led people to think that a firm within the meaning of the definition could have non-resident partners who were not solicitors;

- (b) Clause 3 empowered the Law Society to appoint a prosecutor to assist in the investigation of suspected professional misconduct cases at the pre-disciplinary proceedings stage;
- (c) Clause 4 sought to double the existing number of solicitors and lay persons who could be appointed to the Solicitors Disciplinary Tribunal (SDT) Panel;
- (d) Clause 5 provided for the right of the Law Society to appeal against a finding of a SDT to the Court of Appeal;
- (e) Clause 6 gave a SDT power to publish a summary of its findings and order in any publication produced by the Law Society;

For barristers

- (f) Clause 7 removed the privilege of barristers or advocates from England, Scotland, Northern Ireland and other Commonwealth countries to be admitted in Hong Kong on the basis of their overseas qualification, empowered the Bar Council to prescribe the requirements for admission of all barristers and established a residence requirement of three months as one of the admission criteria;
- (g) Clause 9 provided a mechanism for the removal and restoration of names in the roll of barristers;
- (h) Clause 10 made it a statutory requirement to take out professional indemnity insurance before issue of a barrister's practising certificate;
- (i) Clause 12 established a new category of "employed barristers" who would be allowed to obtain legal opinion from a practising barrister on behalf of their employers, without retaining a solicitor; and
- (j) Clause 15 empowered the Bar Council to make rules governing the admission of barristers and other areas concerning barristers subject to the Chief Justice's prior approval.

4. DSG supplemented that most of the recommendations contained in the Bill were in fact proposed by the Bar and the Law Society. The major provisions in the

Bill had been agreed in principle by the two bodies.

Transitional provisions

5. On clause 7 of the Bill, the Chairman and Dr LEONG Che-hung expressed concern about the impact of the proposed new requirements for admission of barristers in Hong Kong on local students currently pursuing legal studies in the United Kingdom (UK) and other Commonwealth countries, as well as students who might have enrolled or been offered a place in the first year of the legal courses in those countries at the time when the Bill came into effect. They pointed out that a large number of these students started off their plan with the expectation that they could be admitted as barristers based on their UK qualification upon return to Hong Kong, without having to fulfil other requirements prescribed by the Bar. However, with the coming into force of clause 7 (i.e. the proposed new section 27) which removed the existing privileges and imposed new requirements for admission such as passing any examinations prescribed by the Bar, the interests of these students would be unfairly prejudiced. For example, a local law student studying in UK might then be forced to return to Hong Kong to do the Postgraduate Certificate in Laws course, as opposed to his original intention to complete the final year of Bar vocational course in UK, in order to avoid having to sit for the examinations prescribed by the Bar Council under the new set of admission criteria.

Clerk

6. The Chairman said that she had received submissions from quite a number of people who were in the process of obtaining the overseas qualification for admission as barristers expressing serious concern about the possibility of the new requirements barring their chance of local admission based on their UK status. She said that she would circulate the submissions to members and the Administration for information.

Clerk

7. Dr LEONG Che-hung opined that as a matter of justice, a person's right should not be denied half-way without sufficient justification. If the new requirements for admission were to apply to the above-mentioned category of law students, they would face undue hardship because the changes were totally unexpected. He drew members' attention to the controversies arising from the enactment of the Medical Registration (Amendment) Ordinance 1995, which removed the right of medical students graduated from recognized overseas institutions to automatic registration in Hong Kong, and instead required them to pass a licentiate examination set by the Medical Council before they could register and practise in Hong Kong. The disputes subsequently led to the introduction and passage of the Medical Registration (Transitional Provisions) Bill 1997, which was a Member's Bill that sought to amend the 1995 Ordinance by providing, inter alia, a reasonable period in which overseas medical students affected could come back to Hong Kong to register. On this precedence case quoted by Dr LEONG, the Chairman asked the Clerk to circulate the relevant Hansard on the Second Reading debate on the Medical Registration (Transitional Provisions) Bill 1997 for members' reference.

8. In response, Government Counsel informed members that the Administration had discussed the issue with the Bar. It was considered that the matter might be dealt with by way of deferring the commencement date of the new requirements relating to admission of barristers. The Bar had proposed that the commencement date be postponed to 1 November 2001 to allow sufficient time for overseas law students to complete their Bar vocational course for the year 2000/2001 and sit (or re-sit) the qualifying examinations and return to Hong Kong to apply for admission under the existing criteria before November 2001. The delayed commencement date would also enable the Bar Council to prepare the rules in relation to the amendments, e.g. rules relating to the examinations to be sat by persons from foreign jurisdictions for the purpose of admission as barristers in Hong Kong.

Adm 9. The Chairman and Dr LEONG Che-hung were of the view that transitional provisions should be introduced in the Bill to expressly provide that overseas law students mentioned in paragraph 5 above would be exempted from the new admission criteria in clause 7. The Administration undertook to hold further discussions with the Bar.

Adm 10. The Chairman also requested the Administration to explain and compare the existing procedures and requirements governing the admission of barristers in Hong Kong with the new mechanism proposed in the Bill.

11. In response to Dr LEONG Che-hung, DSG advised that according to the Bar, the new rules on admission and examinations etc would be put in place in about 12-month's time in the form of subsidiary legislation made under the Legal Practitioners Ordinance.

Savings provisions

Adm 12. The Chairman said that it might be desirable to specify clearly in the Bill that the amendments in clause 7 would carry no retrospective effect to ensure that those who had already been admitted as barristers under the existing section 27(1)(a)(i) or (ii) of the Ordinance would remain unaffected. She requested the Administration to provide a written response on this point.

GATS standards

13. In response to Mr TSANG Yok-sing, DSG explained that the GATS obligations referred to a set of agreed rules to guard against unfair discrimination preventing the free flow of trade and professional services among state parties to the WTO. He advised that the principle of reciprocity was an important consideration for the introduction of GATS-compatible regulations in Hong Kong.

Adm 14. The Administration agreed to provide the general obligations and rules under GATS for members' information.

Professional indemnity insurance

15. In reply to Dr LEONG Che-hung's question, DSG said that at present, only those holding an unconditional practising certificate (i.e. those who could practise as partners or sole proprietor of a Hong Kong law firm without any conditions) would be required to take out professional indemnity insurance. Solicitors holding a conditional practising certificate were allowed to practise foreign law without first satisfying the requirement of having to take out indemnity insurance. After the Bill was passed, all those who acted as solicitors would have to take out professional indemnity insurance.

Residence requirement

Adm

16. At the request of members, the Administration agreed to clarify in writing whether the residence requirement of three consecutive months prior to the date of application for admission as a barrister would also apply to an applicant who was a Hong Kong permanent resident.

17. In response to Mr TSANG Yok-sing, DSG said that the practice in England was that the admission criteria included a citizenship requirement as opposed to a residence requirement.

Lay members of Solicitors Disciplinary Tribunal (SDT) and Barristers Disciplinary Tribunal (BDT)

18. DSG advised that section 9B(1) and 35A(1) of the Ordinance respectively provided that SDT and BDT should include one lay member. Members of the SDT Panel and BDT Panel were appointed by the Chief Justice.

Ad hoc admissions

19. The Chairman said that the proposed section 27(4) in clause 7 appeared to provide the Court a very wide power in admitting a person as a barrister for the purpose of any particular case or cases (so-called "ad hoc admissions") so that in theory inexperienced practitioners might be admitted for such purpose.

Adm

20. DSG said that the Administration would propose an amendment, after consulting the Bar, to specify that ad hoc admittees were required to have substantial experience in advocacy in court.

Employed barristers

21. Members enquired about the purpose of the proposed creation of a new category of "employed barristers". The Chairman pointed out that insofar as

employed barristers were concerned, there had always been in existence "in-house lawyers" employed under a contract of employment to provide legal services to their employers. These lawyers were differentiated from independent legal practitioners in that they were not allowed to practise in private as long as they retained the status as an employed in-house lawyer. She said that the mention of the creation of a new category of employed barristers might create confusion to the members of the public.

22. In response, DSG said that at present, in-house lawyers had no authority to instruct a barrister in private practice directly for the purpose of getting a legal advice on behalf of their employers without going through a solicitor. With the coming into effect of clause 12, they would be entitled to such "direct access" provided that they applied to the Bar Council and obtained an "employed barrister's certificate" specified in the proposed new section 31C. He said that the new category of "employed barristers" referred to those holding an employed barrister's certificate under the new arrangement.

23. DSG further explained that the new arrangement prescribed in clause 12 had the advantage of reducing costs for the employers. Clause 12 did not involve any policy change and the proposed arrangement was supported by the Bar.

24. In reply to Dr LEONG Che-hung, DSG clarified that barristers holding an employed barrister's certificate were not entitled to attend court proceedings as a private barrister holding a practising certificate. Therefore, they could not act as counsel for their employers in court.

25. Members noted that under the Direct Professional Access Rules set out in the Code of Conduct of the Bar, a barrister in private practice might accept instructions directly from members of a "recognized professional body" without the intervention of a solicitor, such as qualified accountants or arbitrators etc. Members agreed to request the Bar to provide the relevant parts of its Code of Conduct for the meeting's consideration, and to comment on the proposal in clause 12 to create a new category of "employed barristers".

Committee Stage amendments

26. DSG advised that after the gazettal of the Bill, the Administration had had further discussions with the Bar and the Law Society. Having taken their views into consideration, the Administration was in the process of preparing a number of fine-tuning amendments which would be submitted for the consideration and endorsement of the Bills Committee. At the request of the Chairman, DSG agreed to provide an explanatory note on the subject areas in which the Administration was considering proposing amendments for discussion at the next meeting.

Adm

Deputations

27. Members agreed to invite representatives from the two legal professional bodies to attend the next meeting to discuss the Bill and the issues raised at this meeting.

III. Next meetings

28. The following meetings were scheduled -

(a) 17 February 2000 at 10:45 am; and

(b) 28 February 2000 at 8:30 am.

29. The meeting ended at 10:20 am.

(Post-meeting note - The Administration's response to the concerns raised at the meeting has been circulated vide LC Papers Nos. CB(2)967/99-00(01) and 1099/99-00(03). Submissions from the two legal professional bodies have been circulated vide LC Papers Nos. CB(2)1089/99-00(02), 1099/99-00(01) and (02))

Legislative Council Secretariat
29 June 2000