

立法會
Legislative Council

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(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 third meeting
held on Monday, 28 February 2000 at 8:30 am
in Conference Room A of the Legislative Council Building

Members Present : Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon Ronald ARCULLI, JP
Dr Hon LEONG Che-hung, JP
Hon Ambrose LAU Hon-chuen, JP

Members Absent : Hon Jasper TSANG Yok-sing, JP

Public Officers Attending : Mr Stephen WONG
Deputy Solicitor General

Mr Michael SCOTT
Senior Assistant Solicitor General

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. Matters arising

Admission of barristers (proposed section 27(1) under clause 7)

Deputy Solicitor General (DSG) informed members that in view of the concerns expressed at the last meeting, the Administration had requested the law school at the University of Hong Kong and the City University of Hong Kong respectively to advise whether their Postgraduate Certificate in Laws (PCLL) course would be able to cope with the anticipated increase in the number of UK law graduates or UK-qualified barristers intending to seek admission to the local Bar through the PCLL route as a result of implementation of the new admission criteria as proposed in clause 7. Having taken into account the figures on local admission of barristers with UK qualifications in recent years, the two universities had initially responded that they saw no significant difficulties in absorbing a greater number of PCLL applicants in the next few years, provided that the present level of funding support for the PCLL from the University Grants Committee (UGC) would not be reduced.

2. In order to be better apprised of the situation, members agreed that the Bills Committee should write to the two universities direct to seek information concerning the PCLL course such as:

- (a) the admission quota, e.g. whether a specific quota was reserved for local or overseas law graduates;
- (b) the admission criteria for local and overseas law students e.g. whether entrance examination was required;
- (c) the composition of the student body of both the Faculty PCLL course and the self-funded PCLL operated by the School of Professional and Continuing Education (SPACE) of the University of Hong Kong;
- (d) the number of applications for the PCLL courses in (c) above vis-à-vis the number of applications rejected; and
- (e) whether and how the PCLL course could cope with the increasing number of applications from overseas law graduates as a result of the implementation of the new admission criteria proposed for barristers.

(Post-meeting note - Replies from the two universities have been circulated vide LC Papers Nos. CB(2)1315/99-00(03) and (04))

3. The Chairman also suggested that the issue of UGC-funding for the PCLL might be separately taken up by the Panel on Administration of Justice and Legal Services (AJLS Panel).

(Post-meeting note - The subject of UGC-funding for the PCLL was discussed by the AJLS Panel at its meeting held on 21 March 2000.)

4. DSG further informed members that it was a common view shared by both the Administration and the Bar Association that practitioners in Hong Kong should receive adequate training to ensure that they had sufficient knowledge of the legal system in the local context. The new criteria proposed for admission of barristers would help to achieve that objective by encouraging potential barristers to take the PCLL in Hong Kong.

5. The Chairman and Mr Ronald ARCULLI queried whether there had been a change in policy concerning the provision of legal training in Hong Kong. The Chairman opined that admission of legal practitioners should be based on merits and professional competence rather than dependent on where a person received his legal training. She cautioned that the policy should not discourage people from pursuing legal studies overseas.

6. DSG responded that the new admission criteria for barristers proposed under clause 7 of the Bill would not affect people intending to embark on the Bachelor of Laws degree (LLB) in an overseas jurisdiction. In practice, the proposed admission mechanism provided UK-qualified barristers with the option of seeking local admission through the PCLL route, or alternatively through sitting the examinations prescribed by the Hong Kong Bar Council. He said that as explained by the Administration in previous meetings, the proposed section 27(1) in clause 7 complied with the general obligations under the General Agreement on Trade in Services (GATS) because it removed the existing special privileges conferred on a special class of people who could directly gain admission to the local Bar on the basis of their UK qualification.

7. Dr LEONG Che-hung said that he held no dissenting views over the new requirement that in future all foreign lawyers had to pass the requisite examinations in Hong Kong in order for them to be called to the Bar in Hong Kong. He reiterated that his major concern, however, was that the Bill should provide transitional provisions to protect the interests of local students who were already pursuing a legal study in the UK or had been enrolled for a legal course in the UK at the time of passage of the Bill. For these people, their right to apply directly for admission to the local Bar upon obtaining their UK qualification as a barrister should be preserved. He said that a reasonable transitional arrangement was only fair because the change of

law as presently proposed in clause 7 was totally unforeseen by these students when they first decided to pursue their study in the UK. Dr LEONG added that for the same reason, students taking the University of London External LLB course should likewise be exempted from the new admission criteria.

8. On his proposal of incorporating a transitional provision for clause 7 in the Bill, Dr LEONG drew members' attention to the enactment of the Medical Registration (Transitional Provisions) Bill 1997 which provided for a reasonable transitional period during which medical students graduated from recognized institutions overseas could return to Hong Kong to register and practise without having to pass a licentiate examination set by the Hong Kong Medical Council as required under the Medical Registration (Amendment) Ordinance 1995.

9. In response to Dr LEONG's comments, DSG said that the Administration and the Bar Association took the view that by delaying the commencement of the new admission criteria on a date not earlier than 1 November 2001, sufficient time would be allowed for law students who would be embarking on the Bar vocational course in UK for the year 2000/2001 to complete their course. They could then come back to Hong Kong before November 2001 to apply to be called to the Bar pursuant to the admission mechanism under the existing section 27. Alternatively, they could make plans to return to Hong Kong to do the PCLL. On the question of transitional provision, DSG said that there was a marked difference between the case of overseas law graduates and that of medical graduates. In the former, legal training was split into an LLB part and a postgraduate part. Under the new admission requirements, law students who had completed the LLB were provided with the options of PCLL or the Bar Council's examinations for the purpose of admission as barristers. In the latter, however, overseas medical students were left with no choice but to finish their whole five-year programme and pass a licensing examination before they could register and practise in Hong Kong.

10. DSG added that for law students in the UK who would be in their first, second or third year of the LLB in 2000/2001, a choice was also open to them as to whether they should continue with the UK Bar vocational course after completing the LLB, or return to Hong Kong to take the PCLL. Should they decide to take the former course, they would be required to sit for the Hong Kong Bar Council's examinations if they wish to apply for admission as barristers in Hong Kong.

11. Members were of the view that the matter of transitional arrangement should be discussed in greater detail, pending provision of the following information from the Administration :

- (a) the estimated number of Hong Kong students who were currently studying law in the UK and other commonwealth countries;
- (b) an illustration by way of a flow chart of how the following categories of

overseas law students would be affected by the new admission requirements (assuming that the commencement date was not earlier than 1 November 2001) -

- (i) those who would commence the first year of the LLB in 2000/2001 or thereafter;
- (ii) those who were in the first, second or third year of the LLB in 1999/2000; and
- (iii) those who would embark or enroll on the overseas Bar vocational course in 2000/2001.

Adm

Administration's response to the issues raised at the meeting on 24 January 2000
(LC Paper No. CB(2)1099/99-00(03) - Letter from the Administration)

Admission of barristers under existing sections 27 and 27A

12. Government Counsel (GC) briefed members on the criteria stipulated in sections 27 and 27A for admission of barristers in Hong Kong vis-à-vis the new requirements proposed under clause 7 of the Bill.

13. In response to the Chairman, DSG said that the Bar Association had proposed to repeal section 27A and Schedule 1 to the Legal Practitioners Ordinance on admission of legal officers employed in the Department of Justice as barristers subject to certain conditions. The Administration considered that there were merits in the proposal because section 27A which conferred special privileges on legal practitioners from certain specified jurisdictions (i.e. Australia, Canada (except Quebec), New Zealand, Republic of Ireland, Zimbabwe or Singapore) did not comply with the fair principle of GATS. He undertook to revert to the Panel when the Administration had come to a decision on the matter.

14. The Chairman opined that in view of clause 7 which proposed to repeal the existing section 27, section 27A should also be repealed to avoid double standard.

Residency requirements for admission as barristers

15. GC advised that it was provided in the proposed section 27(2)(b) under clause 7 that the person applying to be admitted as a barrister must satisfy one of the following residency requirements -

- (a) had resided in Hong Kong for at least three consecutive months immediately before the date of his application for admission;
- (b) had been ordinarily resident in Hong Kong for at least seven years;

- (c) had been physically present in Hong Kong for at least 180 days of each of at least seven years within the 10 years immediately preceding the date of his application for admission.

16. In response to a question from Dr LEONG Che-hung, GC said that the above requirements also applied to applicants who were permanent residents of Hong Kong. If an applicant who was a Hong Kong permanent resident failed to satisfy requirement (a) because of , for example, a temporary absence from Hong Kong preceding the date of application, he could still apply for admission provided he satisfied either requirement (b) or (c).

17. After some further discussion, members requested the Administration to clarify in writing -

- (a) the meaning of the references to "permanent resident", "has resided in Hong Kong", "has been ordinarily resident in Hong Kong" and "has been physically present in Hong Kong"; and
- (b) whether the above expressions had been used in other legislation relating to admission of professionals, apart from admission of solicitors under section 4 of the Legal Practitioners Ordinance.

Adm

Local experience required of medical practitioners and legal practitioners

18. Dr LEONG Che-hung said that he did not agree with the comments made in the last paragraph under item (c) in the Administration's paper, which stated that -

"A distinction between the case of medical practitioners and the case of legal practitioners is that the former has a common convention in their practice so that their knowledge can be applied universally. They are not required to adapt to local conditions in order to practise. The case is different in the case of legal practitioners. It is more desirable for foreign law graduates to familiarize themselves with Hong Kong's local conditions and environment before they are admitted as barristers..."

Dr LEONG opined that the Administration should not make such a broad-brush distinction as there had been a significant number of medical cases in Hong Kong which found no precedence in other places. The need for a good knowledge of the local conditions and environment equally held true in the case of medical professionals practising in Hong Kong. He expressed concern that the above remarks made by the Administration might be used as an argument to dispute the necessity for a local externship training and a licentiate examination for medical practitioners in Hong Kong. He considered that the Administration should withdraw the above statements made in its paper.

Adm 19. The Chairman asked the Administration to clarify its views on the matter in writing having regard to Dr LEONG's comments.

Relevant sections of GATS

20. GC explained that there were two types of obligations imposed by GATS, i.e. -

- (a) general obligations which applied to all service sectors and all members of GATS; and
- (b) specific obligations which took effect only for those sectors in which a member had made explicit commitment.

She said that Hong Kong had not made any specific commitments in respect of legal services.

21. GC further advised that there were three general obligations which were relevant to the provision of legal services. Of these, the recognition requirements (under Article VII of the GATS) which required members of GATS to set objective, reasonable, non-discriminatory and competence-based criteria for assessing professional qualifications had major implications for the legal profession in Hong Kong.

Retrospective effect of new section 27 under clause 7

22. GC said that the operation of section 23 of the Interpretation and General Clauses Ordinance was sufficient to ensure that the proposed repeal of existing section 27 would not have any retrospective effect which would affect any right acquired by any person admitted as barristers under the section.

The Law Society's response to the points raised at the meeting on 17 February 2000
(LC Paper No. CB(2)1219/99-00(01) - Letter from the Law Society)

Proposed section 8AAA under clause 3

23. Mr Albert HO enquired about the rationale for the proposal to provide a special power to a prosecutor appointed under proposed section 8AAA to summon any person to appear before him to answer questions for the purpose of gathering evidence in respect of a potential matter for a Solicitors Disciplinary Tribunal (SDT), given that the proposed section as drafted did not provide for any sanction against a person declining to answer questions. He said that in the absence of a sanction for non-compliance, the summons would not be enforceable. He expressed reservation about the approach of legislating a power which was in practice "toothless".

24. The Chairman added that a statutory power to summon any potential witness to

give evidence at the investigation stage of a disciplinary matter appeared to be rare in existing ordinances.

25. Mr Albert HO suggested that the Administration might make reference to provisions in other ordinances on investigative powers such as the Independent Commission Against Corruption Ordinance and the Securities and Futures Commission Ordinance.

26. Senior Government Counsel (SGC) responded that the purpose of providing a prosecutor with the powers under proposed section 8AAA was to provide the Law Society with an effective investigative tool to enable the Society to assume a more proactive regulatory role in relation to the conduct of its members. The Administration was of the view that the provision of such powers should be acceptable from the public interest point of view. She added that the Administration accepted the view of the Law Society that although the proposed section prescribed no sanction for non-compliance, it nevertheless made it clear to a potential witness that an investigator appointed by the Law Society had a legal authority under the Ordinance to make enquiries. This would be of considerable assistance in the investigation process. She added that looking from another angle, it might not be desirable to provide the same person with both a power of summon and a power of sanction.

27. Concerning the power to summon under the proposed section 8AAA, SGC advised that comparable provisions could be found in section 18 of the Hong Kong Association of Banks Ordinance and section 29 of the Dumping at Sea Ordinance.

28. The Chairman pointed out that the power to summon for the purpose of obtaining evidence under the Hong Kong Association of Banks Ordinance was restricted to the summoning of employees of banks only. Furthermore, under the Hong Kong Association of Banks Ordinance and the Dumping at Sea Ordinance, the power to summon was exercised, in the former case, by a Disciplinary Committee, and in the latter case, an Appeal Board, rather than by an individual as a prosecutor appointed by the Law Society as proposed in new section 8AAA.

29. The Chairman added that the word "summon" had an implied meaning that punishment would follow for failure to comply. She considered that the Administration should review the drafting of clause 3 as the law must truly reflect the legislative intent to avoid misunderstanding. She drew members' attention to the Law Society's letter (LC Paper No. CB(2)1219/99-00(01)). In the letter, the Law Society had clarified that it was content that the proposal in clause 3 should be amended and replaced in such a way that an inspector appointed under the existing section 8AA should be permitted to question any other person. She suggested that the expression "request to appear" could be used to substitute "summon to appear".

30. SGC said that the Administration was prepared to reconsider the drafting of proposed section 8AAA having regard to members' views and the Law Society's

response. A Committee Stage amendment would be submitted for the Bills Committee's consideration where necessary.

Right to appeal against a finding or order of a SDT to the Court of Appeal under clause 5

31. Members noted that the Law Society had commented that in the last 12 months or so there had been several decisions by SDTs which had caused concern to the Law Society because the decisions appeared to have been perverse. The Society's view was that the decisions did not do justice to the complainant or uphold the public interest. The Law Society also pointed out that in England and Wales there was an unfettered power for the Law Society to appeal against a disciplinary tribunal's decision.

32. Mr Albert HO enquired whether the Administration had consulted individual solicitors on clause 5 of the Bill.

33. DSG answered in the negative. He said that the proposal in clause 5 was initiated by the Law Society which was supposed to represent the general interests of solicitors.

34. On the matter of right to appeal, Assistant Legal Adviser said that at the request of members at the last meeting on 17 February 2000, she had prepared a paper (circulated vide LS 91/99-00) to compare the right to appeal to a court against the decision of a disciplinary body of other professional organizations. Under the various ordinances set out in the Annex to the paper, only the person who considered himself aggrieved by a decision made in respect of him had the right to appeal. There were no provisions in those ordinances similar to the proposed section 13(2A) which empowered the Council of the Law Society to appeal against a decision of a SDT.

35. Members agreed that whether there were sufficient justifications for a right to appeal to be provided to the Council of the Law Society as proposed under the new section 13(2A) should be further examined. To facilitate future deliberation, the Administration was requested to provide the following information for the consideration of members -

(a) the UK position regarding the right of the Law Society in England and Wales to appeal against the decision of a disciplinary tribunal, including information as to when and why was such right provided and whether the right was similar to that proposed in clause 5 of the Bill; and

(b) an explanation of why a right to appeal had not been provided to the Law Society of Hong Kong previously.

II. Next meetings

36. The following meetings were scheduled -

- (a) 13 March 2000 at 8:30 am; and
- (b) 31 March 2000 at 10:45 am.

37. The meeting ended at 10:30 am.

(Post-meeting note - The Administration's responses to the concerns raised at the meeting have been circulated vide LC Paper Nos. CB(2)1354/99-00(01) and 1514/99-00(04))

Legislative Council Secretariat

14 August 2000