

香港律師會的信頭

Letterhead of THE LAW SOCIETY OF HONG KONG

Our Ref : SG/FA/1237
Your Ref : CB2/BC/28/98
Direct Line :

6th April 2000

Mrs. Percy Ma,
Clerk to Bills Committee,
Legislative Council
8 Jackson Road, Central,
Hong Kong.

(fax no. 2509 9055)

Dear Mrs. Ma,

Re: Legal Practitioners (Amendment) Bill

Thank you for your letter dated 31 March. Although it has not been possible in the time available to go through all our files I set out below some recent examples of cases which have given the Law Society cause for concern and hope that these may be of some assistance.

1. In a case involving breach of fiduciary duty to clients against 3 solicitors the chairman of the Tribunal dismissed the complaint because the evidence used to establish a prima facie case by the lay complainant was by way of affirmation yet when the hearing took place before the Tribunal the complainant elected to give evidence on oath. This was unacceptable to the Tribunal chairman who dismissed the case with costs.
2. In a case alleging that a solicitor had acted as a China Appointed Attesting Officer to conduct transactions in the PRC when he was not so appointed the solicitor's firm confirmed that the respondent to the proceedings was in charge of the transaction but later before the Tribunal it was alleged that a secretary in the firm had witnessed the documents and that the respondent had not been involved notwithstanding the earlier admission by the firm. The Tribunal dismissed the complaint against the solicitor.

...../2

6th April 2000

Mrs. Percy Ma
Clerk to Bills Committee
Legislative Council

3. A Tribunal found a prima facie case against a solicitor who had allegedly acted for both parties in a conveyancing transaction but the Tribunal had to be reconstituted. The second Tribunal reversed the decision of the first and decided that the case against the solicitor should not proceed despite the fact that additional expert evidence of deception had come to light after the first Tribunal had withdrawn. The prosecutor and senior counsel advised the Law Society to apply for leave for judicial review but the Council considered it would be inappropriate to involve Tribunal members in that way.
4. A solicitor was suspended from practice but continued to act for clients. Disciplinary proceedings were instituted for practising whilst suspended but the Tribunal dismissed the complaint because it came to the conclusion that there was a doubt as to when the period of suspension began and accordingly found in the respondent's favour.
5. In another case a Tribunal made an order against a respondent which was beyond its powers. In that instance the respondent himself appealed but had he not done so there would have been an injustice which the Law Society would have been unable to remedy.
6. A Tribunal has made a finding that certain of the Solicitors Practice Rules do not apply to the staff working in solicitors' firms. This is in contradiction of the Legal Practitioners Ordinance yet the erroneous decision may stand as a precedent until such time as another Tribunal can correct it.

...../3

6th April 2000

Mrs. Percy Ma
Clerk to Bills Committee
Legislative Council

There may well be other examples of decisions in which the Law Society would like to have challenged a finding but our research has been limited to the last calendar 2 years during which time 36 cases were heard by Solicitors Disciplinary Tribunals. (A further 14 cases have been heard in 2000 and proceedings instituted in another 26.) I hope that the above examples will enable members of the Bills Committee to appreciate that although the proposed power will not be used lightly it will, in appropriate cases enable the interests of the complainant and the long term interests of the profession to be maintained.

Yours sincerely,

Patrick Moss
Secretary General

PM/ff