

BY POST

13-Dec.-99

**The Chairwoman
The Hon. Margaret Ng
Panel on Administration of Justice & Legal Services
The Legislative Council
8 Jackson Road
Central
Hong Kong**

Dear Ms Ng,

Legal Practitioners (Amendment) Bill 1999

You may recall that several months ago in July or so of the year, I wrote to you concerning the above Bill and in particular on the matter of a few HK students doing the UK Bar Examinations whose status for admission to the local Bar will be affected by its enactment. You have kindly shown your concern to the matter and so has the Hon. Secretary of the Hong Kong Bar Association to whom a copy of my letter to you has been sent.

I have now been called to the Hong Kong Bar in Sept. 1999 by virtue of my call to the English Bar in July 1999, after passing the English Bar Examinations in May 1999 but I still feel uneasy about the Bill. I am referring particularly to the saving provision in Clause 16 of the Bill which reads as follows:

“Notwithstanding the repeal of section 27(1)(a)(i) and (ii) of the Legal Practitioners Ordinance (Cap. 159) by section 7 of this Ordinance, a barrister who was admitted under that provision shall not have his name removed from the roll of barristers *so long as he qualifies to practise as a barrister under section 31 of the principal Ordinance.*” [italicising mine]

The explanatory memorandum of the Bill says that the very purpose of Clause 16 of the Bill is to make “a savings provision in respect of British barristers admitted before the repeal of section 27(1)(a)(i) and (ii). [point (o) of the memorandum]

As far as the saving goes, I am, however, at a loss to know why the

qualifying words as italicised by me above are added to Clause 16. Taken literally, does it mean that the saving provision is only available to those British barristers who not only have been admitted to the local Bar but are also in practice, leaving out those already-admitted-but-yet-to-practise British barristers in the cold.

If it is the legislature's intention to give a saving provision for the already admitted British barristers, as asserted in the explanatory memorandum of the Bill, I am afraid Clause 16 appears to have been couched in less than clear terms. If indeed, the Bill seeks to introduce differentiation, it is anything but fair and against natural justice.

As you are no doubt aware, the present position of the law is that a person is admitted to the roll of barristers through the strict formalities of court proceedings on the basis of his qualification and NOT on the fact that he is in practice. Once admitted to the roll, **a barrister is only removable for cause**. This is on all fours with the English Bar and in fact similar to other professions, like the accountants. In saying this, I am of course mindful of the fact that for a barrister to practise, he has to serve out his pupillage under 31 of Cap. 159.

As I also see it, the differentiation, if any, in the saving provision will also result in bias against the British barristers yet in practice vis-a-vis the **locally qualified** counterparts who can still remain on the Bar, notwithstanding that they are similarly still to practise.

For completeness, may I also draw the Panel's attention to section 23 of our Interpretation and General Clauses Ordinance (Cap. 1) which states, inter alia, that "where an Ordinance repeals in whole or in part any other Ordinance, **the repeal shall not --- affect any right, privilege --- acquired, accrued --- under any Ordinance so repealed.**" [sub-section (c) thereof]

Perhaps, I may err on the side of excessive prudence and the Court will construct the saving provision, when enacted, in such a way as to, as far as possible, avoid any inequitable and manifestly unfair result. The problem, however, is whether the court can do anything, if any absurdity is done by the legislature. [R. v. Judge of the City of London Court (1892) 1 Q.B. 273]

I should therefore be most grateful if the Panel could give the matter consideration. I am most sorry for the trouble caused but I do hope the Panel can understand that I have now reached my 50th birthday and being called to the Bar is something which I have long aspired to acquire and which I have in fact now acquired. At my age, I can not take anything for granted. As a matter of fact, I **will** enter into pupillage in one year's time, after finishing off my present

commitments.

On this occasion, I would also like **our Hong Kong Bar Association** (of which I am now an employed member and to which a copy of this letter is being sent) to safeguard the interests of its members or potential members in my category and also give this matter its due consideration.

My most sincere thanks for your kind attention.

Yours sincerely,

Richard LOCK