

香港律師會的信頭

Letterhead of THE LAW SOCIETY OF HONG KONG

Our Ref : SG/FA/1380
Your Ref : LP 5004/4/12C
Direct Line :

13th May, 1999

Ms. Kitty Fung,
Government Counsel,
Legal Policy Division,
Department of Justice,
4/F., High Block,
Queensway Government Offices,
66 Queensway,
Hong Kong.

by fax and post
(fax no. 2869 0720)

Dear Ms. Fung,

Re: Legal Practitioners (Amendment) Bill 1999

Thank you for your letter dated 10th May enclosing draft Legal Practitioners (Amendment) Bill 1999. You will appreciate that this draft Bill was only received by The Law Society on the afternoon of Monday 10th May and was the first occasion on which we had the opportunity to consider its contents and their implications.

We have the following comments on the draft Bill:

- (1) Clause 3. We suggest that sub-clause 1 should read “who has legal training or who is a solicitor”.
- (2) Clause 5. We understand that your colleague has already suggested amendments to this clause.

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- (3) Clause 6(3). We would prefer that the sub-clause should be deleted. The current practice is that on the direction of the Council the Registrar removes the name from the Roll of Solicitors in accordance with Section 19(1) of the Ordinance. There is thus control by The Law Society Council as to whether a solicitor's name should remain on the Roll. Instances have been known when solicitors have sought to have their names removed from the Roll notwithstanding that there are disciplinary proceedings pending against them or, unbeknown to them, a confidential investigation is in hand. Under the proposed procedure if the solicitor concerned intended to be called to the Bar and the investigation or disciplinary proceedings had not by then been concluded the solicitor's name would be automatically removed from the Roll. This would effectively prevent a disciplinary tribunal from striking off the solicitor if it was minded to do so at the conclusion of any proceedings. We would thus prefer the procedure to remain as it is at present.
- (4) Clause 11. We have very great concerns at the proposal to create a new category of lawyer namely, employed barristers holding an employed barrister's certificate. We do not know at this stage what functions an employed barrister will be able to perform and would like this to be clarified. It would appear that this may well have very significant implications for the legal profession. Barristers who have never undergone a period of trainee contract as required of trainee solicitors will be in a position to act in-house in a role identical to solicitors without formal training or supervision. Perhaps on the basis of expediency the much vaunted independence of the Bar will be removed. We are most surprised that such a clause has been included in the Bill without prior consultation with The Law Society bearing in mind the major change to the shape of the legal profession which this proposal could effect. We respectfully suggest that this clause should be the subject of wider discussion between both branches of the profession and the Department of Justice before it is included in the Bill which is intended to go shortly to the Executive Council.
- (5) Clause 14(b). I would suggest that the clause should read "for the purpose of harmonizing the relationship of barristers inter se and, with the prior approval of the Council, governing the conduct of barristers in the relationship of solicitors and barristers."

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I very much hope that consideration can be given urgently to reviewing the provision of clause 11 and to effect the amendments suggested in this letter. I await to hear from you with your response and before the Bill is submitted to the Executive Council.

Yours sincerely,

Patrick Moss
Secretary General