

Meeting of 3rd November, 1954

PRESENT:

HIS EXCELLENCY THE OFFICER ADMINISTERING
THE GOVERNMENT (*PRESIDENT*)
MR. ROBERT BROWN BLACK, C.M.G., O.B.E.

HIS EXCELLENCY THE COMMANDER BRITISH FORCES
LIEUTENANT-GENERAL CECIL STANWAY SUGDEN, C.B., C.B.E.

THE HONOURABLE THE COLONIAL SECRETARY
MR. CLAUDE BRAMALL BURGESS, O.B.E., *Acting*.

THE HONOURABLE THE ATTORNEY GENERAL
MR. ARTHUR RIDEHALGH, Q.C.

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS
MR. RONALD RUSKIN TODD,

THE HONOURABLE THE FINANCIAL SECRETARY
MR. ARTHUR GRENFELL CLARKE, C.M.G.

THE HONOURABLE THEODORE LOUIS BOWRING, O.B.E.
(*Director of Public Works*).

DR. THE HONOURABLE YEO KOK CHEANG
(*Director of Medical and Health Services*).

THE HONOURABLE LEONARD GEOFFREY MORGAN
(*Acting Director of Education*).

THE HONOURABLE HAROLD GILES RICHARDS, O.B.E.
(*Director of Urban Services*).

DR. THE HONOURABLE CHAU SIK NIN, C.B.E.
THE HONOURABLE LAWRENCE KADOORIE.
THE HONOURABLE LO MAN WAI, O.B.E.
THE HONOURABLE NGAN SHING-KWAN.
THE HONOURABLE CEDRIC BLAKER, M.C., E.D.
THE HONOURABLE KWOK CHAN, O.B.E.
DR. THE HONOURABLE ALBERTO MARIA RODRIGUES, M.B.E., E.D.
MR. ROBERT WILLIAM PRIMROSE (*Deputy Clerk of Councils*).

ABSENT:

THE HONOURABLE DHUN JEHANGIR RUTTONJEE.

MINUTES.

The Minutes of the meeting of the Council held on 20th October, 1954, were confirmed.

PAPERS.

THE COLONIAL SECRETARY, by Command of His Excellency the Officer Administering the Government, laid upon the table the following papers: —

<i>No.</i>	<i>Subject.</i>	<i>G.N.</i>
Sessional Papers, 1954: —		
No. 24—	Annual Report by the Chief Officer, Fire Brigade for the year 1953/54.	
No. 25—	Annual Report by the Commissioner of Police for the year 1953/54.	
Training Centres Ordinance, 1953.		
	Tung Tau Wan Training Centre Declaration, 1954.....	A. 127
Pharmacy and Poisons Ordinance, Chapter 138.		
	Poisons (Amendment) (No. 3) Regulations, 1954	A. 132
Pharmacy and Poisons Ordinance, Chapter 138.		
	Poisons List (Amendment) (No. 2) Regulations, 1954.....	A. 133
Defence (Finance) Regulations, 1940		
	Possession of Gold (Goldsmiths) (Amendment) (No. 7) Order, 1954.....	A. 135

ARMY LEGAL SERVICES BILL, 1954.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled “An Ordinance to enable the Deputy Assistant Director of Army Legal Services, Hong Kong, to practise as a solicitor of the Supreme Court in certain cases and subject to certain conditions.

He said: —Sir: The purpose of this Bill is explained in the statement of “Objects and Reasons”, but I would add just a word or two. This Bill is the outcome of consultation with the Commander British Forces, the Acting Chief justice and the Law Society.

Sir, as I was contemplating what I should say in addition to that which is stated in the statement of “Objects and Reasons” this morning, I received a document which was addressed to “Lieutenant-General Ridehalgh, Legal Department.” That document was a delivery note for some Christmas cards. I wondered whether this was really a suggestion to me that my Honourable and Gallant Friend should be substituted to move this Bill, and at one time I contemplated telephoning my friend and asking him to do so, but as this is really lawyer’s law. I thought that perhaps the cobbler had better stick to his last.

Sir, the position is this in relation to the Bill—that members of Her Majesty’s Forces when charged with criminal offences can obtain legal aid from Services’ sources but only to a limited extent: the funds available will not meet the charges and fees of both solicitor and counsel; and it was thought that as the local military authorities have a qualified lawyer at their disposal, he could properly be enabled to act as solicitor for the defence in such cases. The Law Society have no objection to the proposal, and the Acting Chief justice and the Law Society have agreed the terms of the Bill.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

The “Objects and Reasons” for the Bill were stated as follows: —

The purpose of this Bill is to enable the Deputy Assistant Director of Army Legal Services, Hong Kong, to act as solicitor for members of Her Majesty’s Forces in criminal proceedings brought against them. This will enable him to appear for the defence, if necessary, before the Magistrates and in the District Court, and to instruct counsel for the defence in cases before the Supreme Court and in any other cases where the circumstances warrant it. He will be subject to the provisions of the Legal Practitioners Ordinance (Cap. 159), but he will not be liable to pay the fees prescribed in the Third and Fourth Schedules to that Ordinance, and in no case will he be entitled to any remuneration for his services.

MERCHANT SHIPPING (AMENDMENT) BILL, 1954.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled “An Ordinance to amend the Merchant Shipping Ordinance, 1953.”

He said: —Sir: The statement of “Objects and Reasons” sufficiently explains the purpose of the Bill. I have nothing to add thereto.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

The “Objects and Reasons” for the Bill were stated as follows: —

When a shipping casualty occurs the Governor may appoint a marine court to investigate the matter under section 50 of the principal Ordinance. In contrast with the U.K. legislation, there is no provision for the holding of a preliminary inquiry to determine whether or not it is advisable that a marine court should be appointed and it is not always possible to acquire the necessary information on which to base a report to the Governor. Clause 2 seeks to introduce a new section enabling a preliminary inquiry to be held and giving to the person holding the inquiry certain powers which include a power to require the attendance of and examine witnesses. Clause 3 imposes a penalty for refusing to attend as a witness and other similar offences.

2. Section 101 of the principal Ordinance provides that Part XIV shall apply, *inter alia*, to small boats (except pleasure boats). It is open to argument that all pleasure boats whether used for commercial purposes or not are excluded from the operation of Part XIV. Clause 4 seeks to remove this doubt.

DEFAMATION AND LIBEL (AMENDMENT) BILL, 1954.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled “An Ordinance to amend the Defamation and Libel Ordinance, Chapter 21.”

He said: —Sir: This is a simple amendment and it is sufficiently explained, I think, in the statement of “Objects and Reasons”, and I have nothing to add thereto.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

The “Objects and Reasons” for the Bill were stated as follows: —

When the Defamation and Libel Ordinance was originally enacted in 1887 it included provisions adapted from the Libel Act, 1843 enabling a person charged with defamatory libel to raise certain defences not open to him at common law. A further provision (not taken from the law of England) was included providing that nothing in the Ordinance should apply to an *ex officio* information filed by the Attorney General. This provision is now contained in section 22 of Chapter 21. The effect is to preclude a person charged with defamatory libel who is proceeded against by way of *ex officio* information from raising defences permitted to him if he is proceeded against on indictment. It is thought that this is illogical and unfair. This Bill therefore proposes the repeal of section 22 of the principal Ordinance.

BUSINESS REGULATION (AMENDMENT) BILL, 1954.

THE FINANCIAL SECRETARY moved the First reading of a Bill intituled “An Ordinance to amend the Business Regulation Ordinance, 1952.”

He said: —Sir: Very considerable difficulties have been encountered in the administration of the Business Regulation Ordinance which was passed in 1952; and Honourable Members will no doubt recollect that the matter was raised in the course of the Budget Debate last March.

There have been two main points on which the administration has almost foundered. One was the question of the conditions that had to be satisfied before the Director of Commerce and Industry could remit or reduce the fee payable on registration.

It was laid down in the original Ordinance that the applicant for remission must apply within a certain time limit. Even if the applicant sent in his application in time the Director, before considering it, had to satisfy himself that the remission or reduction was Justifiable, having regard to the nature and extent of the business and to the profits therefrom.

The Ordinance had only been in operation a short while when it was discovered that the time limits imposed were unsatisfactory, and last year an amending ordinance was passed. But the Director still had to satisfy himself in regard to the nature and extent of the business and the profits. In the event, it has happened that very many small businesses, such as stalls in doorways, small shops in squatter areas, and so on, have applied for remission. The Director is faced with an almost insuperable task in satisfying himself that the reduction or remission of fee is justifiable. He would have a comparatively simple task if he had merely to have regard to the nature and extent of the business, but he is also obliged by law to have regard to the profits. The Commerce and Industry Department is not properly equipped to assess the profits of any business; that is the function of the Commissioner of Inland Revenue. But an even greater problem is that the vast proportion of applications for remission received are out of time, and the Director is bound to ignore them. He reports that but for the restrictions in which he is encompassed he would in a great number of cases remit or reduce the fee because he is satisfied from the size and nature of the business that payment of the full \$200 fee would be hardship.

Accordingly it is proposed to amend the law to provide that the Director shall no longer be required to have regard to the profits of the business, but may satisfy himself on the question of remission by reference merely to the nature and extent of the business. It is also proposed that an application for remission, for example, in the case of an existing business, may be entertained up to one month *after* the expiry of the existing licence, instead of the date of expiry, as at present. It is further proposed that when he sees fit, to meet the case of those people who cannot, or do not, read the law, the Director may in his discretion extend the time for application. It is hoped that these concessions will help materially to ease the heavy accumulation of work in the Commerce and Industry Department.

The other main difficulty has arisen from the provision which requires two different types of certificate at two different fees. It is now provided that one business in one set of premises must have a certificate costing \$200. A person carrying on two businesses, even in the one set of premises, pays \$600. A person carrying on one business at two or more sets of premises also pays \$600. In practice it has proved extremely difficult to decide when, so to speak, a business is one business or two businesses, and to decide on what constitutes two sets of premises. There have, also, been objections from incorporated firms who have a business in one set of premises, but as a matter of convenience happen to have their registered offices with their accountants, or auditors, or solicitors, and are hence obliged to pay \$600 instead of \$200. In order to simplify the administration as well as to satisfy those who feel themselves somewhat harshly treated by the existing provisions, it is proposed that henceforth there shall be only one type of certificate at a fee of \$200. As a corollary to this, it is proposed to lay down that every applicant for a certificate shall declare all his businesses, and all the addresses at which such businesses are carried on. This will meet one of the main objects of the Ordinance, which is to provide the Inland Revenue Department with as much information as possible.

There are a number of minor amendments largely of a tidying up nature. The-, are set forth in the Objects and Reasons and I do not think it is necessary for me to add to them.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows: —

The two principal objects of this Bill are the substitution of a uniform type of business registration certificate for the previous two types (clauses 3(a) and (b)) and the extension of the time limit within which appeals may be entertained against payment of the full registration fee (clause 3(d)). These two

amendments considerably simplify the administration of the Ordinance and enable appeals against payment of the full fee to be considered where previously they would have been too late particularly in cases where the appellant did not, in fact, realize that any fee was payable. Various consequential amendments follow (clauses 5(a) and 6).

2. The opportunity has been taken to redraft section 8 to achieve greater clarity (clause 4) and to make the necessary amendment to subsection (8) of section 11 consequent on the creation of the District Court (clause 5(b)).

3. Clause 3(c) removes the necessity for the Director in reaching a decision as to remission of the whole or part of a business registration fee to have regard to the profits from the business. It is judged more in keeping with the spirit of section 7(5) of the Ordinance that the size and type of a business should be the determining factor where appeals for remission of fee are concerned.

4. Clause 2 removes certain unnecessary definitions and introduces an amended definition of the term "business" which seeks to remove doubts as to the application of the Ordinance.

5. Amendments to the Business Regulation Rules, 1952, consequential on the enactment of this Bill will be made by the Governor in Council in exercise of the powers given by section 13 of the Ordinance.

SUPPLEMENTARY APPROPRIATION (1953-54) BILL, 1954.

THE FINANCIAL SECRETARY moved the Second Reading of a Bill intituled "An Ordinance to authorize a supplementary appropriation to defray the charges of the financial year ended the 31st day of March, 1954."

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Second time.

Council then went into Committee to consider the Bill clause by clause.

Clauses 1 and 2 and the Schedule were agreed to.

Council then resumed.

THE FINANCIAL SECRETARY reported that the Supplementary Appropriation (1953-54) Bill, 1954 had passed through Committee without amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed into law.

ADJOURNMENT.

H. E. THE OFFICER ADMINISTERING THE GOVERNMENT: —That concludes the business for to-day, Gentlemen. Council will adjourn to this day fortnight.
