

LC: Speech by the Secretary for Justice in resuming
second reading debate of the Legal Practitioners
(Amendment) Bill 2009

Following is the speech by the Secretary for Justice,
Mr Wong Yan Lung, SC, in resuming the second reading
debate of the Legal Practitioners (Amendment) Bill 2009
in the Legislative Council today (January 20):

Mr President,

When I introduced the Legal Practitioners (Amendment)
Bill 2009 into this Council in June 2009, I explained
that this Bill sought to amend the Legal Practitioners
Ordinance to implement the scheme for granting higher
rights of audience to solicitors proposed in the final
report published by the Working Party on Solicitors'
Rights of Audience in October 2007. The Bill, if passed,
would enlarge the pool of advocates capable of reaching a
high standard of advocacy before the higher courts so
that the public could benefit from a wider choice of
capable advocates.

Since the introduction of the Bill, four meetings
have been held by the Bills Committee. The Bills
Committee chaired by the Hon Margaret Ng, has thoroughly
examined the clauses and the policies behind them. I am
most grateful to the Hon Margaret Ng and the members of
the Bills Committee for their hard work and helpful
contributions.

Some changes to the Bill have been proposed and
agreed. As a result, I will be moving a number of
Committee Stage Amendments later this afternoon. The
proposed Committee Stage Amendments primarily relate to
Clause 4 of the Bill which proposes to add a new Part
IIIB incorporating new sections 39E to 39R to the Legal
Practitioners Ordinance.

I will now give a brief outline of the more
important amendments.

Clause 4, proposed section 39E(3) - Higher Rights
Assessment Board (Assessment Board)

The proposed section 39E(5) provides that the Chief
Justice may appoint a panel of persons (Panel) whom he
considers suitable for appointment as members of the
Assessment Board and who are not, in his opinion,
connected in any way with the practice of law.

The proposed section 39E(3) requires members of the Assessment Board be appointed by the Chief Justice and that one member must be selected by the chairperson of the Assessment Board from the Panel for the appointment.

Given that members of the Panel shall be appointed by the Chief Justice, the Judiciary took the view that the further appointment of a Panel member to the Assessment Board by the Chief Justice is unnecessary. That view was accepted by the Bills Committee. Committee Stage Amendments will be moved to amend the proposed section 39E(3) to give effect to the proposal. In addition, consequential amendments to the proposed sections 39E(5) and 39F(1) will also be moved for this proposal.

Clause 4, proposed section 39F(1) -Provisions relating to members of Panel

The Bill does not specify an appointment term of the Panel. Given that the proposed section 39F(1) provides that a member of the Assessment Board is to hold office for a term not exceeding three years but may be reappointed, it was proposed that section 39F(1) be amended such that the Panel members would also be appointed to hold office for a term not exceeding three years, but may be reselected. The Bills Committee accepted the proposed amendment and a Committee Stage Amendment will be moved to amend section 39F(1) to give effect to the proposal. Consequential amendments to the heading of section 39F will also be moved for this proposal.

Clause 4, proposed section 39G - Provisions relating to proceedings of the Assessment Board

The proposed section 39G(1) provides that the quorum for a meeting of the Assessment Board is seven members, of whom (a) one must be a solicitor who engages in litigation work in the course of ordinary practice; and (b) one must be a senior counsel. The Legal Service Division of the Legislative Council Secretariat (Division) expressed its concern that the Bill would allow meetings of the Assessment Board be held and decisions be made without the presence of a member who is an eligible person (namely, a serving or former judge). Furthermore, the proposed section 39G(4) only provides the chairperson of the Assessment Board with a casting vote. The Division expressed its concern that the Assessment Board may not be able to make a decision at a meeting where the

chairperson is absent and the votes of the members are equally divided.

To address the above concerns, the Bills Committee agreed that Committee Stage Amendments should be moved -

(a) to introduce a new section 39G(1)(aa) such that the chairperson or a member who is an eligible person must be present at a meeting of the Assessment Board to form a quorum;

(b) to introduce a new section 39G(1A) such that the chairperson, or if he is absent, a member who is an eligible person nominated by him, must preside at the meeting of the Assessment Board; and

(c) to amend the proposed section 39G(4) such that the chairperson or, in his absence, the person who presides at a meeting of the Assessment Board, shall have a casting vote.

Clause 4, proposed section 39K(1) - Determination of application by Assessment Board

The proposed section 39H(2) provides that an applicant must specify in his application for higher rights of audience whether his application is in relation to civil proceedings or criminal proceedings or both.

The proposed section 39K(1) provides that after an application is made, the Assessment Board must decide whether to grant or refuse the application. It is not clear from this provision as to whether the Assessment Board is entitled to grant higher rights of audience in relation to only civil or criminal proceedings when the application is in relation to both, if the Assessment Board is satisfied that the applicant has complied with the statutory requirements for granting higher rights of audience in relation to one type of proceedings but not the other.

Having considered the views of the Bills Committee, the Administration will move a Committee Stage Amendment to introduce a new section 39K(1A) to clarify explicitly that the Assessment Board is entitled to do so. Consequential amendments to the proposed sections 39K(2)(a)(ii), 39L(1)(b) and (c), 39M(3), 39N(a) and 39P(1) will also be moved to give effect to this proposal.

Apart from the above, the Administration will also be moving other Committee Stage Amendments to deal with

minor and technical issues.

The House Committee has considered the Committee Stage Amendments that I propose to move and has indicated that it has no objection to them.

Conclusion

Mr President, as Members have emphasised when they spoke on the Bill, public interest is the paramount consideration in this matter. The stakeholders concerned, including the Hong Kong Law Society and the Hong Kong Bar Association, have taken public interest as the ultimate consideration and this is to be commended. Besides, the Hong Kong Bar Association is willing to accept challenges and this is not easy. Just now, some Members have put forward their views on issues such as whether the two branches of the legal profession should be fused and whether this scheme has any implications on legal costs. Mr President, these are rather far-reaching and complex issues and there are many factors to consider. I would like to emphasise that the Administration does not have any plan to unify the two branches of the legal profession, given the complexities involved. However, it can be seen from the Bill introduced today that all the stakeholders have reached a consensus. As such, subject to the Committee Stage Amendments proposed by the Administration, I commend the Bill to Honourable Members with a view to implementing the scheme as soon as possible. Thank you, Mr President.

Ends/Wednesday, January 20, 2010