

LC: Speech by SJ in moving the Second Reading of Legal Practitioners
(Amendment) Bill 2009

Following is the speech (English translation) by the Secretary for Justice, Mr Wong Yan Lung, SC, in moving the Second Reading of the Legal Practitioners (Amendment) Bill 2009 in the Legislative Council meeting today (June 24):

President,

I move that the Legal Practitioners (Amendment) Bill 2009 be read a second time.

This Bill proposes to amend the Legal Practitioners Ordinance to implement the scheme for granting higher rights of audience to solicitors proposed in the report published by the Working Party on Solicitors' Rights of Audience (the Working Party).

This Bill has its origins in a report published by the Working Party established by the Chief Justice to consider whether solicitors' existing rights of audience should be extended and, if so, the mechanism for dealing with the grant of extended rights of audience to solicitors.

In October 2007, the Working Party published a report ("the Report") recommending a proposal for granting higher rights of audience to solicitors. Under the proposed scheme, solicitors having at least 5 years' post-qualification experience and satisfying further eligibility requirements may apply to a board called the Higher Rights Assessment Board (the Assessment Board) for higher rights of audience before the High Court and the Court of Final Appeal.

Details of the administration of the scheme will be governed by subsidiary legislation to be made by the Assessment Board after the enactment of the Bill.

I will first deal with the establishment of the Assessment Board. The Assessment Board will comprise members appointed by the Chief Justice from serving or former judges, members of the legal profession, officers of the Department of Justice, as well as a lay member also appointed by him.

The Bill also provides for the terms of office, resignation and removal of a member of the Assessment Board, and also for the proceedings of the Assessment Board.

I will now turn to the eligibility requirements for applying to the Assessment Board for higher rights of audience. An applicant should satisfy the eligibility requirements set out in the Bill in order to apply to the Assessment Board for higher rights of audience, whether in respect of civil proceedings, criminal proceedings or both civil and criminal proceedings. Among other requirements, the applicant has to have at least 5 years' post-qualification experience. Further, the applicant has to comply with rules, which may include requirements respecting completion of an approved advocacy course and passing of related assessments, to be made by the Assessment Board.

An applicant who complies with the alternative requirements prescribed by rules to be made by the Assessment Board may seek exemption from the requirements. In addition, the Assessment Board has to be satisfied that the applicant has acquired recent litigation experience and is in all respects a suitable person to have the higher rights of audience for which the application is made.

The Bill provides for the cessation of a person's higher rights of audience. A person who has higher rights of audience ceases to have those rights on being adjudged bankrupt, or ceasing to be on the roll of solicitors, or being suspended from practice as a solicitor. The Bill also provides for reacquisition of the rights in specified circumstances, such as his/her discharge from bankruptcy, restoration on the roll of solicitors or suspension from practice being set aside.

I now deal with the disciplinary matters relating to solicitor advocates, that is, persons who have acquired higher rights of audience. The Bill proposes that the Law Society Council will issue a code of conduct for solicitor advocates, in consultation with the Chief Justice and the Council of the Hong Kong Bar Association. The Law Society would implement the code as well as deal with disciplinary matters arising from its breach.

The Bill also proposes that where a person who does not have higher rights of audience in respect of certain proceedings under the Bill purports to exercise those rights as a solicitor, the person is guilty of contempt of court and commits an offence punishable by a fine of \$500,000.

I now turn to the empowering provisions of the Bill. As the Assessment Board is required to deal with various matters relating to applications for higher rights of audience, such as the supporting documents and application fee, as well as the determination of those applications, the Bill empowers the Assessment Board to make rules to deal with these matters. It further provides that the Assessment Board may make rules dealing with matters relating to any courses, training, assessments or examinations required to be completed or passed by an applicant for higher rights of audience.

Mr President, it is in the public interest to enlarge the pool of advocates capable of reaching a high standard of advocacy before the higher courts so that the public can benefit from a wider choice of capable advocates. The Bill seeks to implement the proposal for granting higher rights of audience to solicitors in order to achieve this objective.

I commend the Bill to this Council.

Ends/Wednesday, June 24, 2009