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## Should Law Society speak up only when asked?

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Clarissa Oon and Kor Kian Beng check out the legal fraternity's views on restrictions on the Law Society

A LAW amended 22 years ago to curb the legal profession from speaking up proactively on legislation matters is once again in the spotlight.

When the Law Society hinted it would welcome a change last week, it drew a quick rebuff from the Government. The latter reiterated its stand that it does not want the Law Society to turn into a 'political pressure group'. (See separate story.)

What prompted the exchange? Critical remarks made by the London-based International Bar Association's Human Rights Institute (Ibahi) last week, that the Law Society was not speaking out enough on law reform issues in Singapore.

The Society, a self-regulatory body for the 3,500 practising lawyers here, said in its defence that its powers were limited by Section 38(1)(c) of the Legal Profession Act (LPA).

That clause says the Law Society is 'to assist the Government in all matters affecting legislation submitted to it' and is commonly interpreted to mean that the Society can only comment when requested by the Government.

Yes, the Government has indeed consulted it more than 30 times in the past three years, said the Society, but it would still welcome a relaxing of the language of Section 38(1)(c) to allow it to submit proposals for law reform 'on its own initiative', in 'the same way any private citizen' could.

The Law Ministry replied: 'The considerations for amending it in the first place remain valid. We do not want to revert to the situation in the 80s where the Law Society behaved like a political pressure group.'

Beating the drum?

SPEAKING to Insight, Law Society president and Senior Counsel Michael Hwang says it is not 'beating the drum' to have Section 38(1)(c) changed.

But, there is a but. 'We're reminding them that 22 years is a long time,' he says.

The Society has not been embroiled in any major run-ins with the Government since 1986, he adds.

While most agree the Society should not become a front for partisan politics, several lawyers interviewed feel the current wording of the Act amounts to over-regulation.

They note that this follows from the Government's longstanding approach to civil society: It sets conditions such that the latter is made to function as a partner rather than an adversary.

National University of Singapore (NUS) law professor and Nominated Member of Parliament Thio Li-ann sums it up thus: 'We consult you and will hear your views, but it is to improve our policies.'

Compared to other professional groups such as those representing doctors or engineers, the Law Society has come in for special scrutiny.

One reason is the close nexus between law and politics, as 'the law regulates so many facets of human activity', as Professor Thio puts it.

Another possible reason for the Government's wariness is that the Law Society already wields more powers than other professional bodies.

A non-profit organisation established in 1967, it regulates as well as represents lawyers. It is the only regulatory professional body here that does not report to the executive arm of the Government.

The Society's job is to promote the interests and uphold standards of the legal profession. It oversees the registration of lawyers, conducts disciplinary proceedings and also assists needy citizens in law-related matters.

From all these, it is only a short step away to applying its collective expertise to making proposals that would improve the laws themselves, say some lawyers.

At the moment, lawyers are free to initiate proposals in their personal capacities, and many have done so. They just cannot do so in the name of the Society.

Mr Peter Cuthbert Low, a former Law Society president, believes the organisation can contribute much more to society than just looking after its own backyard.

'Why should law reform emanate from the Government alone? It should be allowed to emanate from practising lawyers, who are at the frontline of application and administration of the law,' he says.

Even so, Mr Low recalls two instances where unsolicited proposals on law reform were put forward by the Society and considered by the Government.

The first was in 2005 when it presented a policy paper on certain provisions of the Criminal Procedure Code, such as procedures related to criminal discovery and earlier access of defence counsel to their accused persons.

The second was in 2006, when it reviewed the death penalty for capital charges, after an Australian drug trafficker of Vietnamese descent was hanged here. The Society later recommended that the death penalty should not be made mandatory for crimes like murder, drug trafficking and firearms-related offences.

Mr Low hopes such initiatives can become the norm rather than the exception. 'We should be allowed to make proposals proactively and not be reactive,' he argues.

Agreeing, lawyer and Nominated MP Siew Kum Hong says it is 'artificial' and 'arbitrary' to limit the Law Society's right to comment to 'legislation submitted to it'.

'That seems to leave it very much to the administrative discretion of civil servants whether society gets to benefit from the Law Society's input,' he adds.

Drawing the line

THE key issue appears to be where to draw the line between law and politics, and what actions would render the Society a 'political pressure group'.

No definitive demarcation has been attempted by anyone, whether from the Government's or the lawyers' side.

Mr Siew wants this changed. Ruling out all unsolicited comments on legislation from the Law Society is tantamount to 'throwing out the baby with the bathwater', he says.

There was arguably a test case in 2006 when then-Society president Philip Jeyaretnam wrote in the Law Gazette that the profession 'ought to be freed to express its views on civil liberties while keeping out of partisan politics'.

The Law Ministry's reply - a clear 'No' - indicated an unstated view that this would be venturing into politics.

Mr Jeyaretnam declined to comment when approached by Insight this week.

While most of those interviewed by Insight agree that the Society should not be hijacked by party politics, there is less agreement on its involvement in legal issues that are politically charged.

Mr Siew, the outspoken lawyer- cum-NMP, prefers the line to be drawn not between 'permissible' and 'prohibited' issues, but 'in terms of the content of the input'.

This should not be polemical, but 'professional' and grounded in 'legal arguments', he says.

What proportion of its 3,500 members fall into each camp is unknown. Mr Hwang, the current president, hazards the guess that most younger lawyers are apathetic when it comes to politics.

There is also no consensus on whether to take a more combative or conciliatory approach when speaking up, says Prof Thio.

A larger issue, though, is not so much the lack of consensus over what to say and how to say it, but the overriding lack of trust from the Government.

On the restrictive clause in Section 38(1)(c), lawyer Subhas Anandan says: 'It was debatable whether there was a need for the law 22 years ago, and it's definitely more debatable now.'

'If we say something wrong or defamatory, the Government knows what to do,' he asserts, pointing to safeguards against seditious acts or defamation elsewhere in the law.

There are also adequate checks and balances within the Society itself, says former Society president, Mr Low.

For example, members can call for an extraordinary general meeting, ask the president or council members to account for their actions and call a vote of no-confidence against them.

Of the 22 members on the council, three are appointed by the Government. Fifteen of them are elected by members yearly while the rest are nominated by the council.

NUS Dean of Law Tan Cheng Han states a position that few can disagree with:

There can be some ambiguity at the edges of the line between 'matters relating to law reform' and 'engaging in political pressure'. However, 'as long as the principles are clear, perhaps our society is at the stage where greater discourse on such issues is more beneficial'.

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## THE STATUS QUO IS FINE

'Should this continue to be the thinking today or tomorrow? That is perhaps a question for the electorate in the future. But I believe that there are ample avenues for public discourse on topical issues.'

SENIOR COUNSEL ALVIN YEO, senior partner of WongPartnership and a Member of Parliament, arguing that political discourse should be carried out through the political process and through political parties, not societies or associations

## THE LAW SHOULD BE CHANGED

'If it's so nice and easy, why have the law?'

MR SUBHAS ANANDAN, president of the Association of Criminal Lawyers and senior consultant at KhattarWong, arguing that the frequent consultations between the Government and the Law Society do not necessarily mean that there is no need for a change in Section 38(1)(c)

## DIFFERENT WAYS TO SKIN A CAT

'One alternative approach is to amend it to say that the Law Society should not comment on areas outside the profession and its domain expertise. This also enhances the duty of self-regulation (which already exists in the current provision) on the part of the Law Society.'

MR EUGENE TAN, law academic at Singapore Management University, arguing that relations between the Law Society and the Government have improved but Section 38(1)(c) remains a useful deterrent should the Society over-reach

## IT DEPENDS

'Whether the law should be changed: Well, as Hamlet says, that is the question. I think the focus should be on the entirety of civil society, of which the Law Society is a part, and the importance of a robust civil society in a society committed to democratic principles.'

PROFESSOR THIO LI-ANN, a law academic at National University of Singapore and a Nominated MP, arguing that trust between the Government and the Law Society is being built up, and that it has an important role to play within the clearly defined boundaries

SMS, e-mail your views

WHAT should the Law Society focus more on? Should the law also be relaxed to allow the Society the right to comment on all legislation?

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