LEGISLATION COMMENTS

LEGAL PROFESSION (AMENDMENT) ACT 1986[1]

THE purpose of the new amendments — "to assure the general public who deal with legal practitioners that standards must be maintained"[2] — is given effect to by the modification of two basic areas of the Legal Profession Act[3] ("the principal Act"). These are firstly, the election, appointment and the vacation of office by members of the Council of the Law Society[4] and secondly, the structure of disciplinary proceedings against advocates and solicitors.[5]

Election, Appointment and Vacation of Office by Council Members

The new provisions — section 51(2A) to 51(2G) — strike a balance between the view that council members must have a clean record if they are to set standards and the view that permanent disqualification from holding office is too extreme, especially in cases where the misconduct is of a less serious nature. Clearly, the law required reform in this area. Prior to these amendments there was no statutory restriction on practitioner members[6] guilty of grave misconduct from being elected as members of the Council. This was undesirable not only from the point of view of the voter who might choose a candidate in ignorance of the latter's past record, but more importantly, policy and the public interest require that the governing body of the legal profession — which plays a vital role in the disciplinary process — be appropriately constituted. The new provisions endeavour to do this as follows: if a practitioner member has been struck off the roll or suspended from practising for six months or more or has been convicted of an offence involving fraud or dishonesty he will not be eligible for election or appointment[7] unless he obtains the leave of a court of three judges.[8] The application for leave cannot be made within the five years following the date of the conviction, reinstatement to the roll or the expiry of the suspension.[9] If the application is dismissed the applicant will have to wait a further five years before he can make another application.[10]

1 No. 30 of 1986. In force, 31 October 1986.

2 The Attorney-General at p.BlO of the Report of the Select Committee on The Legal Profession (Amendment) Bill, No. 20 of 1986.

3 Cap. 217, Singapore Statutes, 1970 Rev. Ed.

4 *Ibid.,* Part V.

5 *Ibid.,* Part VII.

6 *i.e.* advocates and solicitors who have in force a practising certificate: s.42(l) and s.42(3) of the principal Act.

7 The new s.51(2A) of the principal Act.

8 The new s.51(2B) of the principal Act.

9 *Ibid.*

10 The new s.51(2C) of the principal Act.

The matter of whether leave should be granted rests entirely with the Court, which must be "satisfied" that "his conduct since his conviction, striking off or suspension did not make him unfit to be a member of the council."[11] The section does not define the standard of fitness to be attained for the purpose of Council membership. For example, will minor breaches of etiquette during the period since the conviction, striking off or suspension be a basis for a finding of unfitness? It would appear[12] that the Court is not to take into account the gravity of the conduct which resulted in the conviction, striking out or suspension. The absence of a definition of fitness is appropriate in view of the amorphous nature of "behaviour". Conduct must be viewed in its own circumstances and therefore may require different responses from case to case. The Court would be unnecessarily fettered by a restrictive definition.

Apart from satisfying the Court, certain procedural requirements must be satisfied. The application must be made by way of motion.[13] Notice of intention to apply and the supporting documents must be served, at least fourteen clear days before the hearing, on the Attorney-General and on the Law Society.[14] The applicant will have to show affidavits of two practitioner members who are and have been in practice for at least five years during the seven years immediately preceding the date of the application. The affidavits must show that in the opinion of the practitioner members the applicant is a fit and proper person to be a member of the Council. The opinion must be justified by statements as to the applicant's good behaviour since the date of the conviction, striking out or suspension. This provision is of the utmost importance as the Court is likely to place much reliance on the affidavits in the absence of any opposition to the application by the Law Society or the Attorney-General.[15] The safeguards are firstly that the affidavit involves an oath or affirmation, which, in the event of falsehood, would render the deponent liable to criminal proceedings.[16] Secondly, the deponent must state the grounds for his belief. This will discourage practitioner members from attesting unless they really are in a position to do so. Thirdly, the applicant is encouraged to show such affidavits from more than two practitioner members, two being the minimum requirement.[17]

The new provisions also introduce the requirement of disclosure. All practitioner members prior to their appointment or election must declare to the Law Society that they are not disqualified by virtue of section 51(2A) or, if they are, that leave has been obtained under section 51(2B).[18] Failure to make such a declaration constitutes an offence in respect of which a fine of up to $1000 may be imposed.[19]

Once in office the Council member will have to vacate it in any of the circumstances specified in section 59(1) and (2). Section 59(1) is amended so as to ensure vacation of office where a Council member has been convicted of an offence involving fraud or dishonesty. Under the previous law,

11 The new s.51(2E)(b) of the principal Act.
12 *Ibid.*
13 The new s.51(2D) of the principal Act.
14 "... either or both of whom may be represented at the hearing of, and may oppose the application.": The new s.51(2E)(a) of the principal Act.
15 The new s.51(2E)(a) of the principal Act.
16 Penal Code (Cap. 224, Statutes of The Republic of Singapore 1985 Rev. Ed.), s. 191.
17 The new s.51(2E)(c) of the principal Act.
18 The new s.51(2F) of the principal Act.
19 The new s.51(2G) of the principal Act.

despite such a conviction, he could continue to hold office until he was struck off the roll or suspended, an event which might take a considerable time to occur (if at all). The new subsection (4) brings section 59 into line with section 51 so that where leave is obtained under section 51(2B) prior to his election or appointment section 59(1) & (2) do not apply. What section 59(4) does not make clear is that section 59(1) and (2) obviously must apply to the Council member in respect of subsequent conduct which falls within those subsections.

The Structure of Disciplinary Proceedings

The disciplinary structure is now a more developed process the efficacy of which is tied to the introduction of a new entity (the Inquiry Panel), a new personage (its Chairman), newly-constituted Inquiry and Disciplinary Committees, greater involvement in the disciplinary process by the judges of the Supreme Court, the Attorney-General and the Council and a new sense of accountability to the public.

(1) *The Inquiry Stage*

Previously the Inquiry Committee was a body of between five and nine advocates and solicitors[20] which met "from time to time".[21] Applications that an advocate and solicitor be dealt with and complaints against an advocate and solicitor would be referred by the Council directly to the Inquiry Committee.[22] Under the new amendments there is no longer a permanent Inquiry Committee which hears applications and complaints from time to time. Rather, Inquiry Committees are specifically formed to hear cases as and when they arise. The new Inquiry Panel[23] consists of a maximum of forty persons of whom not more than twenty are advocates and solicitors and not more than twenty are lay persons.[24] As in the case of the previous Inquiry Committee, the members of the Panel are appointed by the Chief Justice[25] and the members who are advocates and solicitors must have at least 12 years standing[26] and need not be in practice.[27] The Chairman[28] of the Inquiry Panel would appear to be a vital key in the new system for he is specifically given the task of forming a fresh Inquiry Committee to enquire into each application or complaint.[29] Appointed by the Chief Justice,[30] the Chairman is solely accountable for the operation of the process. It is the Chairman to whom the Council must refer an application or complaint[31] and it is the Chairman who must constitute an Inquiry Committee.[32] His role extends beyond mere formation; he is also given the

20 The former s.85(l) of the principal Act.
21 The former s.85(7) of the principal Act.
22 Section 86(1) of the principal Act prior to the amendments.
23 The new s.85(l) of the principal Act.
24 A lay person is defined in s.2 of the principal Act as amended as including "... an architect, accountant, banker, company director, insurer, professional engineer, medical practitioner or a person who possesses such other qualifications as may be approved by the Chief Justice and the Attorney-General." The requirement of high educational standing is necessary so as to ensure effective participation by the lay persons at both Inquiry and Disciplinary Committee Levels.
25 The new s.85(l) of the principal Act.
26 The new s.85(2) of the principal Act.
27 The new s.85(l) of the principal Act.
28 The new s.85(5) of the principal Act.
29 Section 86(2) as amended and the new s.86(2A) of the principal Act.
30 The new s.85(5) of the principal Act.
31 Section 86(1) of the principal Act as amended.
32 The new s.86(2A) of the principal Act.

power to insist that applications and complaints are sufficiently supported.[33]

The functions of the Chairman of the Inquiry Panel ensure a more ordered structure in that he occupies the role of administrator and is personally accountable for ensuring that the process runs smoothly. Further, as he will be in constant touch with the members of the Inquiry Panel he will be in a position to keep the Chief Justice (who bears the responsibility of appointing and removing members of the Inquiry Panel) well informed and well advised of current situations. Although there is no requirement that the Chairman of the Inquiry Panel be an advocate and solicitor, this is desirable in view of his role in determining whether applications and complaints are sufficiently supported[34] and because he will have to liaise with other advocates and solicitors who sit on the panel.[35] The present Chairman is an advocate and solicitor.

The new system will enable several Inquiry Committees to function at the same time. This will not only expedite the inquiry process by spreading out the burden of work which was previously imposed on the single Inquiry Committee but will also ensure a greater range of expertise among the numerous panel members. The new Inquiry Committees each consist of four persons:[36] two advocates and solicitors and one lay person chosen from the Inquiry Panel and a legal officer who has not less than ten years experience. All four members must be present to conduct business.[37] The wider representation is in line with the principle propounded by the Attorney-General.[38] The reduction by half of advocates and solicitors on an Inquiry Committee and the inclusion of a legal officer and a lay person both of whom specifically represent the public interest will do much to remove the "shroud of secrecy"[39] and to dispel any doubt which may have existed hitherto as to the impartiality of Inquiry Committee proceedings. An equally important justification for the amendment is that if an advocate and solicitor has conducted himself improperly towards his client then the public is necessarily involved not only because it must be protected but also because the advocate and solicitor is an officer of the Supreme Court[40] and is in breach of his public duty.

An Inquiry Committee must commence its inquiry within two weeks of its appointment[41] and submit its report to the Council within two months from the date of commencement of the inquiry. The procedure for deliberation by the Inquiry Committee[42] and for consideration of its report by the Council[43] are left untouched. However, whereas previously the Inquiry

33 The new s.86(3) of the principal Act.

34 *Ibid.*

35 Note that the chairman of the Inquiry Committee must be an advocate and solicitor: the new s.86(2B) of the principal Act.

36 The Chairman of the Inquiry Committee has a casting vote: the new s.86(2B) of the principal Act.

37 The new s.86(2C) of the principal Act. Previously only three members were required to constitute a quorum: the former s.85(4) of the principal Act.

38 See text at note 2 *ante.*

39 The Attorney-General at p.B2 of the Report of the Select Committee on the Legal Profession (Amendment) Bill, No. 20 of 1986.

40 Section 83(1) of the principal Act.

41 The new s.87(l) of the principal Act. According to the former s.87(l) of the principal Act, the Inquiry Committee was to proceed within two weeks of receiving a written order or deciding of its own motion to enquire or receiving an application or complaint.

42 Sections 87(2) to (6) of the principal Act.

43 Section 88 of the principal Act.

Committee could only be bypassed (so that the matter would be referred directly to the Disciplinary Committee on application to the Chief Justice) in the case of a conviction of the offence of criminal breach of trust or of any other offence involving fraud or dishonesty,[44] there is now a new ground for such a procedure: the new section 86(2) provides that where the Supreme Court or a Judge thereof or the Attorney-General *requests* that the matter or complaint be referred to a Disciplinary Committee then the Council must apply to the Chief Justice to appoint one. Clause 7 of the Bill[45] is varied significantly in that it provided that every reference by the Supreme Court, Judge or Attorney-General automatically bypasses the Inquiry Committee stage. The requirement of a request indicates that not every reference will be a basis for the expedited procedure. This is clearly sensible: it is the purpose of an Inquiry Committee to determine whether a case is made out against the advocate and solicitor so that formal investigations by a Disciplinary Committee can take place. If a matter or complaint remains to be inquired into then the preliminary process must be utilised. On the other hand if the evidence against the advocate and solicitor is sufficient to warrant formal investigation by a Disciplinary Committee, the appointment of an Inquiry Committee would cause unnecessary delays. The new amendment rightly envisages that there may be situations when, although there is no conviction of the offence of criminal breach of trust or of any other offence involving fraud or dishonesty,[46] the matter is nevertheless sufficiently serious and well founded in order to justify a request for the expedited procedure under section 86(2).

(2) *Disciplinary Committees*

The changes in the structure of Inquiry Committees are reflected at the Disciplinary Committee level. The new Disciplinary Committee, which is appointed by the Chief Justice, consists of four members of whom either one or two will be advocates and solicitors depending on whether a retired judge or advocate and solicitor will be chosen out of the panel of five persons.[47] The other two members are a legal officer[48] and a member of the Inquiry Panel who is a lay person.[49] Like the new Inquiry Committees, several Disciplinary Committees can be appointed.

One of the more important changes is the introduction of experience. Prior to the amendments the members were merely required to have in force practicising certificates without having to satisfy a minimum period of standing. Now, the person appointed from the panel of five is either a retired judge or a person who has not less than twelve years' experience as an advocate and solicitor. The legal officer must have at least ten years' experience. The reasons for diversity in composition of an Inquiry Committee apply even more strongly in the case of a Disciplinary Committee which is a quasi-judicial tribunal and therefore must be seen to be doing justice. While giving evidence before the Select Committee the Attorney-General had this to say:

44 The former s.86(5) of the principal Act now to be found in the new s.90(b) of the principal Act.

45 No. 20 of 1986.

46 See *ante* note 44.

47 The new s.91(l)(a) of the principal Act.

48 The new s.91(l)(c) of the principal Act.

49 The new s.91(l)(d) of the principal Act.

> Because proceedings of Disciplinary Committees are, as in the case of Inquiry Committees, held in strict confidence, it is not possible to gauge with accuracy the record of Disciplinary Committees of the Law Society in carrying out their functions. The Government's perception of the conduct of Disciplinary Committees of the profession as well as the perception of the public as a whole are formed by the instances which have come to public knowledge. Unfortunately, they are the unsavoury ones. It is these instances that have created the impression that Disciplinary Committees have been somewhat tardy in the discharge of their duties and are indeed prepared to cover up.[50]

The lay member has no vote[51] at Disciplinary Committee proceedings. This takes into account the Law Society's objection that persons without a legal background would not have the necessary understanding of the procedures and matters of law which arise at this stage of the process.[52] Nevertheless the fact that he is entitled to observe and participate stresses the new priority of openness. As to the inclusion of the legal officer, this is justified not only because he represents the public interest but also because his experience means an important contribution to the substantive and procedural work of the Disciplinary Committees.

An apparent inconsistency in the previous law was that although the Inquiry Committee was specifically required to carry out its work expeditiously[53] there was no similar provision relating to the Disciplinary Committee. This situation has now been changed by the new section 93(2A) so that if a Disciplinary Committee fails to conclude a matter within six months of its appointment the Law Society may apply to the Chief Justice for directions to be given to the Disciplinary Committee. The application is discretionary rather than obligatory because, one assumes, there may be cases in respect of which six months is too short a period in which to reach a determination no matter how expeditiously a Disciplinary Committee carries out its work. Other amendments to section 93 are geared to the theme of openness. Thus the findings and determination of Committees must be published[54] and copies of the entire record of the proceedings are to be made available to members of the public upon payment of the prescribed fee.[55]

(3) *Review of Decisions*

The new section 92A and the amendments to section 97 concern the issue of who may take the process further if dissatisfied with the Council's decision that there is to be no formal investigation[56] or the Disciplinary Committee's decision that no cause of sufficient gravity for disciplinary action under section 84 exists.[57] The effect of section 92A is that if the matter was referred to the Law Society by the Supreme Court or a judge thereof or the Attorney-General and any of them are dissatisfied with the decision of the Council or a Disciplinary Committee then the Attorney-General may

50 Page B13 of the Report of the Select Committee.
51 See the new s.91(6) of the principal Act.
52 Pages A6 and A7 of the Report of the Select Committee.
53 The former s.87(l) of the principal Act.
54 The new s.93(4) of the principal Act.
55 The new s.93(5) of the principal Act.
56 Section 96 of the principal Act.
57 Section 97 of the principal Act.

make the necessary application under section 96 or section 97 (whichever is appropriate) by virtue of the fact that "... all references... to a person who made the written application or complaint shall be construed to include a reference to the Attorney-General."[58] Section 97 is amended so as to allow the Council to make an application. This amendment was prompted by the case of *James Chia Shih Ching* v. *Law Society of Singapore*[59] in which the Privy Council held that the words "... the person who made the written application or complaint ..." in section 97 could only encompass an application or complaint made by a person under section 86(1) and not the Council of the Law Society.[60] Therefore the latter was not in a position to make an application under section 97.

Although there is no requirement in section % or section 97 that the judge reviewing the case must not be the person who made the reference to the Council, the new section 98(7A) does so insist in the case of "show cause" proceedings in which a court of three judges will decide whether the advocate and solicitor ought to be struck off, suspended or censured. The difference in approach between section 96 and section 97 on the one hand and section 98 on the other may be justified as follows: sections % and 97 will come into operation when the soundness of the Council's or Disciplinary Committee's determination is doubted. If a judge made the complaint it must be assumed that it is well-founded. It follows that if the Council decides that the matter should not go to a Disciplinary Committee or if a Disciplinary Committee decides that no cause of sufficient gravity for disciplinary action exists there may be nothing objectionable in allowing the complainant judge, in some cases,[61] to examine the Council's or Disciplinary Committee's reasons for coming to its decision. The judge may then be satisfied. If not, there are still two higher tiers in both of which he cannot be involved: the court of three judges which will hear the "show cause" proceedings[62] and the Privy Council.[63] Thus an effective balance is achieved between allowing the complainant judge to determine whether what was in his mind a warranted complaint has been sufficiently investigated and properly decided upon, and ensuring that justice is seen to be done by requiring his absence at the final stages of appeal.

Powers and Purposes of the Council

Although the fundamental changes concern the matter of Council membership and the structure of disciplinary procedings, the new amendments have a wider purview, namely, the amendments to section 39(1)(c) and section 61(l)(d) of the principal Act which concern the purposes and powers of the Law Society. The effect of the amendment to section 39(l)(c)

58 The new S.92A of the principal Act. The Explanatory Statement in the Bill provides at clause (i) that one of the purposes of the Bill is "to enable the Attorney-General to have recourse to the same procedures available to other complainants".

59 [1985] 2 M.L.J. 169.

60 The Explanatory Statement in the Bill provides at clause (g) that one of the purposes of the Bill is "to enable The Council of the Law Society to apply for review of a decision of a Disciplinary Committee in the light of the decision of the Privy Council in *James Chia Shih Ching* v. *The Law Society of Singapore."*

61 It is assumed, however, that the complainant judge will only review the case when there are good reasons why he should do so *ie.* particular circumstances known only to him making it desirable that he should hear the matter.

62 Section 98(6) and the new s.98(7A) of the principal Act.

63 Section 98(6) of the principal Act.

is that the Law Society can only assist the Government and the courts in all matters affecting legislation if the particular legislation is "submitted to it". These new words merely emphasise that assistance is only necessary when it is sought and therefore the amendment merely clarifies the purport of section 39(l)(c).

The amendment to section 61(l)(d), although identical, is less straightforward. The previous wording provided that the Council could "examine and if it thinks fit to report upon current or proposed legislation and any other legal matters". The new amendment adds the words "submitted to it" after the word "legislation". One assumes that the original aim of section 61(l)(d) was to enable the Council to keep members up to date with current law and to comment on the effect of statutory provisions for informative purposes. As a governing body the Council ought to play an educative role[64] with regard to its members in all matters of law. This is in line with the Law Society's general duty to improve the standing of the legal profession as a whole.[65] The addition of the words "submitted to it" would seem to compromise this educative role because the Law Society cannot now — of its own volition — explain and comment on current or proposed legislation for the benefit of its members. It is assumed, however, that it is not the legislature's intention to curb this function but rather to ensure — with justification — that the Law Society never assumes a political role. This is evident from the Report of the Select Committee[66] and is consistent with the amendment to section 39(l)(c). However, whether the Council remains entitled to comment on legislation "to facilitate the acquisition of legal knowledge by the members"[67] is left in doubt.

Conclusion

It is indeed ironic that of the various professions which exist in a developed society it should be the lawyers who require the strictest regulation. That this is so is justified by their considerable responsibility to the public not only in terms of the money which they are entrusted with or other aspects of their conduct but also because they form part of and therefore represent the system of justice in their country. Strict rules will always be necessary as long as people in positions of responsibility fail to put the public interest before their own. These changes in the law have not only brought about substantive improvements but have also provided an opportunity for reflection and self-examination.

JEFFREY D. PINSLER*

64 See s.39(l)a, s.39(l)b and s.39(l)d of the principal Act.

65 See s.39.

66 See p.B83 *et seq.*

67 S.39(l)(b) of the principal Act.

* LL.B (L'pool), LL.M. (Cantab.), Barrister (MX) Advocate & Solicitor, Lecturer, Faculty of Law, National University of Singapore.