

MP Pritam Singh's speech on Legal Profession (Amendment) Bill

Thank you Mr Speaker.

Firstly I would like to thank the Ministry for re-considering the original amendments in light of public feedback and the legal fraternity's reservations to some of the proposed changes to the Legal Profession (Amendment) Bill.

It is noteworthy that the Ministry has decided to delete the proposed amendment to s 35 after public feedback, in light of one of the central pillars of arbitration – party autonomy; in recognition of the fact that clients should be free to choose whoever they believe is best suited to represent them in arbitration proceedings. I understand many in the arbitral community welcome this view, and the Law Ministry should be commended for doing away with this proposed amendment.

Mr Speaker, it leaves me to pass some views on the ad hoc admission of Queen's Counsel.

According to the MinLaw public consultation paper on the amendments, the original manifestation of this amendment called for a proposed licensing scheme that would give rights of audience in the local courts to a small number of 'independent counsel'. This purpose of this licensing scheme according to the consultation paper was to address the shortage of Senior Counsel in commercial and financial disputes. However, after feedback MinLaw noted that preference was for Queen's Counsel to be admitted on an ad-hoc basis, rather than through the Licensing Scheme.

But while the current amendments ostensibly seek to make it easier to admit QCs for commercial disputes, it also statutorily raises the threshold for the admittance of Queen's Counsel from criminal cases to other areas of domestic law such as family, constitutional and administrative law. What this suggests is that the freedom of Singaporeans to choose the appropriate counsel for legal is going to be statutorily curtailed as clause 4 amends s 15(2) to say "any area of law prescribed for the purpose of this section" rather than just criminal matters as it currently stands. Effectively, the amendments set out two standards, both of which are clearly not spelt out in the bill, but are understood to be those stated in the consultation papers.

There was some opposition to the amendment to s.15 from the public I understand and the Ministry replied noting that the Court still had the discretion to decide whether to admit Queen's Counsel on a case-by-case basis, effectively stating that such Counsel can still be admitted in cases involving domestic areas and that the factors taken into consideration in such an application would be a matter for the court to decide.

This position from the Ministry then begs the question why there is a need to amend s 15, especially since any application to admit a Queen's Counsel remains a matter for the court to decide?

Mr Speaker Sir, perhaps the desire of the Ministry to open the door to QCs in commercial matters is an opportune time to consider whether the courts should be left to decide whether the admittance of QCs would be necessary or not. It is noteworthy that public confidence in our judicial system is not low. Insofar as the proposed amendment to s.15 is concerned, the changes effectively operate to narrow the scope of the judiciary's flexibility to allow the admittance of QC and statutorily sets an even higher threshold for family, administrative and constitutional matters amongst others. A more propitious course of action would be to allow the judiciary to assess each case, regardless what the area law – commercial or otherwise – on its own merits, and to assess whether the questions of law or fact, necessitate the admittance of a QC.

Mr Speaker Sir, over the years, albeit in a handful of significant cases, some local lawyers have found it difficult to engage senior local lawyers to act in cases where there were political overtones. Like the admission of Queen's Counsel for complex commercial and financial disputes – which is what this Bill ostensibly seeks to address – in the same vein, there is a concern that the door to entry for QCs should not be restricted for politically-charged cases either because senior local lawyers are reluctant to accept such briefs, or that only very few are willing to do so.

Sir, there are of course many pros and cons to keeping the door ajar for a Queen's Counsel. A natural response would be that opening the door to them could take away work for local lawyers. This concern should not be taken lightly. But to mitigate this, any individual or corporate who seeks redress in a local court should expect to make clear to the bench why he or she needs a foreign lawyer, regardless if the case involves commercial law or local law – my view Sir is that it is simply a case of one standard for all, with the courts, not parliament determining that standard and applying it equally across all legal practice areas.

This would result in greater consistency insofar as the development of Singapore law as a whole, rather than the current proposed amendment which could portend a bifurcation in the development of Singapore law in the years to come – a highly up-date common law on commercial matters to the benefit of businesses, but a regime that could be behind the curve on local jurisprudential matters to detriment of Singaporeans, as the brightest international legal brains have many more hoops to negotiate before being allowed to take on a domestic matter. To a lesser extent, the diminished prospects of local lawyers being invited to advise clients in foreign jurisdictions on non-commercial matters or penning cutting edge academic commentary on local law could also be apparent over time when compared against their commercial colleagues.

Mr Speaker Sir, in light of the fundamental changes to the local legal landscape over the past few years, especially with the entry of foreign lawyers and law firms, some local lawyers fear that the government has gone too far in its drive to liberalise the legal sector, and that the qualified entry of QCs for commercial matters is but evidence of this – an about-turn in view of the judicial impetus to develop Singapore law from the 1990s and the appointment of local Senior Counsels to practically remove necessity of QCs.

To some Singaporeans, there is a concern that opening the door for QCs in commercial matters is myopically driven by economic interests alone as the international corporates may seek to extract quid pro quo from the government- i.e. if you want us to come and invest, we want to bring our own lawyers. Mr Speaker, this emotive can be quite strong in small and medium sized firms. Opening the door to QCs especially in areas of law that are financially lucrative, is perceived by some to further prejudice the prospects of small and medium sized firms who cannot compete.

To conclude, like the response of the Ministry in cancelling its proposed amendment to s 35 on arbitration issues, perhaps the Minister could review the proposal to admit Queens Counsel, in a holistic manner rather than solely from the perspective of a shortage of Senior Counsel to advise on commercial and financial matters. I am of the view that the judiciary and not Parliament is best placed to decide if any case heard locally warrants the admittance of a QC, regardless what the area of law. Parliament need not over legislate, but allow the judiciary space to shape the contours of Singapore's legal development in an independent way, keeping in mind the interests of local and foreign lawyers, and of course the local Bar.

Thank you.