Practising Law Without a Practising Certificate

Recently, my attention was drawn to an apparent anomaly in the legislation governing the exclusive rights of practising advocates and solicitors to practise law, as set out in sections 32 to 34 of the Legal Profession Act (the 'LPA').

A practising lawyer of many years' standing had decided to retire from active practice and to give up his Practising Certificate. However, he wished to serve as an Honorary Legal Adviser to a Voluntary Welfare Organisation ('VWO') on a *pro bono* basis. When he called me to ask if there would be any objection to this, I spoke from instinct to say that this should be in order. However, I discovered that he had received written advice from the Secretariat of the Law Society that referred him to a judgment of Chan Sek Keong JC (as he then was) in *Turner (East Asia) Pte Ltd v Builders Federal (Hong Kong) Ltd & Anor* [1988] SLR 1037. Many of us remember that judgment well as establishing the proposition that (under the LPA as it then stood in 1988) only holders of Practising Certificates were entitled to appear in arbitration proceedings in Singapore (and that decision has since been nullified by section 35 of the LPA which now allows foreign counsel to appear in arbitration proceedings in Singapore). However, for present purposes, the relevant part of the judgment appears at pp 1043D-E and 1046D, which is reproduced below:

> *In my view, two tests may be constructed from these authorities and the provisions of ss [32] and [33] of the Act:*
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> > *(a) other than those specific acts listed in ss [33](1) and (2), an act is an act of an advocate and solicitor when it is customarily (whether by history or tradition) within his exclusive function to provide, eg giving advice on legal rights and obligations, drafting contracts and pleadings and pleading in a court of law;*
> >
> > *(b) a person acts as an advocate and/or solicitor if, by reason of his being an advocate and solicitor, he is employed to act as such in any matter connected with his profession.*
>
> *…*
>
> *to construe s [33](1) in the manner contended by counsel for the respondents would mean that any unauthorized person in Singapore is free to practise law if such practice is confined to giving legal advice to his clients… [as] such service is not prohibited by s [32] or s [33] of the Act. In my view, the legislature could not have missed such a large hole in the Act. There are a number of indications in the Act which do not support counsel's construction: (a) s [34](h) expressly exempts a law teacher from s [33] when he renders any opinion on the law or act in an advisory capacity on any matter in which he has been instructed; by implication, this service (which is the giving of legal advice) is prohibited by s [33].*

These passages have hitherto been interpreted by the Law Society as preventing any person not in possession of a Practising Certificate from giving advice on matters of

Singapore law. While a definitive interpretation of the meaning of these words must ultimately come from our courts, my own view (which is shared by Council) is that they do not prevent retired practising advocates and solicitors from offering their legal advice on a *pro bono* basis as they would not be 'practis[ing] as an advocate or solicitor or do[ing] any act as an advocate or solicitor' within the meaning of section 32(1) of the LPA, which I think was the evil contemplated by Chan JC in the *Turner* case.

In any event, on a close reading of sections 32 to 34, it seems to me that there is a larger problem with its wording. Even if we say that *pro bono* advice and legal work are outside the scope of the prohibitions in those sections, the position of in-house counsel is strangely unclear. At first sight, they would seem caught by these provisions, since they are offering legal services for reward. But I think it is uncontroversial that there is no general objection to in-house counsel providing legal services to their employers on the basis that they are not offering their services to the public at large, but only to one client (or sometimes to related companies of their employer); their employers therefore are fully aware of their lack of Practising Certificates and their lack of formal qualifications to practise Singapore law, and employ them subject to those deficiencies. However, despite likely consensus on that issue, there is nevertheless an anomaly in the law as drafted. The point is made clearer when we compare our legislation to the Malaysian Legal Profession Act, which provides in section 38 that company employees such as in-house counsel are exempted from having to hold a Practising Certificate pursuant to section 37. Section 38(1)(d) provides that:

> *Section 37 shall not apply to '… any person acting solely for a company or organization which he serves as a full time paid employee in any matter or proceeding in which the company or organization is a party, but such person shall have no right to represent the company or organization in Court or in Chambers or attest documents for the company or organization which are required to be attested by an advocate and solicitor'.*

So it seems that these provisions may need reviewing by the relevant authorities in the near future with a view to rationalizing the law on the need for Practising Certificates.

Michael Hwang, SC
President
The Law Society of Singapore