

By Fax (2501 4636) and By Hand

Your Ref: SC 261/8/106 Pt. 4

20 October 2006

Judiciary Administrator
Judiciary Administration
Judiciary
Room 256, LG2 High Court
38 Queensway, Hong Kong

Attn: Miss Vega Wong

Dear Madam,

Re: Lands Tribunal Review

I refer to your letter dated 29 September 2006.

2. The draft Directions enclosed with your letter were discussed by the Bar Council at its meeting held recently. The Bar Council has the following comments:

Paragraph 12 (establishment of a special list for building management cases)

3. Under the proposal, there will be two regimes in so far as listing for hearing of cases in the special list for building management cases is concerned, namely the regime before the effective date of 1 January 2007 and the regime with effect from 1 January 2007.

4. Paragraph 12 states that the new procedures will not be applicable to cases for which application to list for hearing has been made before 1 January 2007. The Bar notices that the enabling provision for cases to which the pre-1 January 2007 regime applies, namely *rule 14(1) of the Lands Tribunal Rules*, will still remain in the Lands Tribunal Rules after 1 January 2007, and there will be no consequential amendments

to rule 14(1) and transitional provisions upon the coming into effect of the Directions. The Bar is not too sure whether a litigant may be able to challenge the validity of the said new procedures on the ground that they are *ultra vires* rule 14(1) of the Lands Tribunal Rules.

Paragraph 14(c) (filing of evidence by respondent)

5. Under *rule 78 of the Lands Tribunal Rules*, the respondent shall, if he wishes to oppose the application, within 21 days of service of the notice of application upon him, file his notice of opposition. The Bar is concerned whether this will give the respondent sufficient time to file and serve his evidence. This is because whilst there may be a letter before action before the applicant files his notice of application, chances are that not every prospective respondent will go and seek legal advice immediately upon receipt of such a letter. By the time he does receive a letter before action, it may take him some time to find a solicitor in the first place, and then there is also the lead time needed for solicitor-client interaction before (a) a proper notice of opposition can be finalized and filed and (b) the necessary evidence can be identified, gathered and filed.

6. The Bar is aware that pursuant to *rule 78*, at the time of filing his notice of opposition, the respondent will need to state therein the facts relied upon by him in sufficient detail to enable the applicant to know the case he has to meet. However, the Bar reckons that the kind of details expected of such statement of facts as contained in the notice of opposition will be different from the kind of details expected of a proper, full-blown witness statement.

Paragraph 14(h) (unless orders, etc. for repeated defaults)

7. It is not clear whether the unless orders or orders barring the litigant who has committed repeated defaults from adducing evidence at the trial without leave, are to be made by the Tribunal upon application by the other party or by the Tribunal of its own motion, or both. The Bar would suggest that this be expressly spelt out in this sub-paragraph of the Practice Directions.

Paragraph 14(i) (review by Tribunal on paper)

8. From the cost-saving point of view, this proposal is to be welcomed. However,

since the review on paper is to be carried out by the Tribunal without the benefit of the attendance and assistance by the parties' legal representatives, the Bar is concerned whether this will create considerable, additional demand on the judicial time of Presiding Officers of the Tribunal.

Yours sincerely,

Philip Dykes SC
Chairman

VY/al