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## PE1197/G

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Dear Mrs Tough

### Petition PE1197

Further to your letter of 19 November regarding this Petition, I confirm that the Society has made some research into the system of representation in Nordic (rather than Scandinavian) legal systems.

First, the systems in the different Nordic countries, i.e. Finland, Sweden, Denmark and Norway do differ in rather considerable respects. The systems in Finland and Sweden are the most liberal, as they were introduced as recently as the late 19th century, whereas the Danish and the Norwegian systems are less liberal. As a result, significant differences exist, e.g. regarding restricted work areas.

In the following comments (for which I am grateful to a former member of the International Bar Association Council for Finland), I will focus only on the Finnish and Swedish systems which are almost identical and more liberal than the Danish and Norwegian. It is true that the Finnish/Swedish system does not acknowledge reserved work areas for members of the Bar. This means that, in order to assist or represent somebody before a court, the person does not need to be a member of the Bar or, in most cases, even a lawyer although there is a requirement to have a Master's Degree from a Finnish University or an equivalent degree from an ETA country. As a practical matter, it is for obvious reasons such as complexity of the law and procedural expertise that it is increasingly rare nowadays for non-lawyers to appear before the courts.



The Finnish / Swedish system has both pros and cons. The main pros are:-

1. that the system promotes efficiency in the profession, as the areas are open for competition from others; and
2. as being a member of the Bar is not a condition for practicing law, the Bar can more easily set standards and apply rules to its members without the involvement of public authorities. A member of a Bar is always left with the option of resigning his or her membership if he or she is unhappy with the rules set by the Bar. Thus, for instance, both the Finnish and Swedish Bars introduced prohibitions against MDPs; against taking shares for payment; and against representing several bidders in controlled auctions. Despite restrictions imposed and the lack of any reserved work areas, most lawyers engaged in the practice of law prefer to be members of the Bar because that enhances their standing and credibility. Accordingly, the right to use the title "advocate", (which is exclusively reserved for members of the Bar) is a "positive brand" which attracts litigants.

The disadvantage of the Finnish/Swedish systems is that lawyers who are not members of the Bar and, as stated above, who may still practice law, are not subject to the rules of conduct and the supervision applying to the members of the Bar. In practice, this means that there is no guarantee that any person engaged in the practice of law is subject to supervision; has professional indemnity insurance; is subject to the obligation of continued legal education or the jurisdiction of a complaints system. In fact, I am informed that there is a proposal in Finland by a governmental committee to review the present system in Finland, including the rights of audience. As the matter now stands, it seems likely that some restrictions for non-members will be introduced, such as exclusive audience in the Supreme Court for members of the Bar. The ultimate reason for this movement is that the courts have noted that the quality of non-members varies so much that it would be in the interest of the public to reserve certain limited areas of the practice of law for members of the Bar.

I attach an overview study on legal services in Finland which may be of interest to the Committee:-

<http://www.optula.om.fi/uploads/ntbmlz24xbnhwy.pdf>



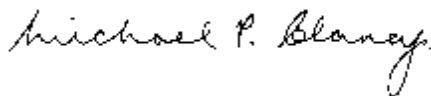
Apart from the issues which flow from an examination of other jurisdictions, which may not be germane to the Scottish legal tradition, there are some specific comments I would make on the proposal to allow non-lawyers to appear in court on behalf of other parties:-

1. In small claims, non-lawyers who are duly authorised can appear on behalf of other parties in the Sheriff Court.
2. Under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, rights of audience and rights to conduct litigation can be sought by professional bodies who wish their members to undertake representation in the courts on behalf of third parties. As you note in your letter, the Association of Commercial Attorneys has been granted such a set of rights.

Any other body which would wish to acquire such rights will require to comply with the statutory provisions.

I hope that this information is helpful to the Committee.

Yours sincerely



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