

## ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

### HEAD 94 - LEGAL AID DEPARTMENT Subhead 001 Salaries

Members are invited to recommend to Finance Committee -

- (a) the creation of the following permanent post in the Application and Processing Division of the Legal Aid Department -

1 Assistant Principal Legal Aid Counsel  
(DL1) (\$98,250 - \$104,250); and

- (b) the redeployment of the following permanent post from the Litigation Division to the Application and Processing Division -

1 Assistant Principal Legal Aid Counsel  
(DL1) (\$98,250 - \$104,250)

### PROBLEM

The approved directorate establishment of the Application and Processing Division (A&PD) of the Legal Aid Department (LAD) is inadequate for the Division to maintain its efficient operation and to improve the quality of its services.

### PROPOSAL

2. The Director of Legal Aid (DLA) proposes to create a permanent post of Assistant Principal Legal Aid Counsel (APLAC) (DL1) in A&PD and to redeploy to it another permanent post of APLAC from the Litigation Division (LD). The Director of Administration supports this proposal.

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## JUSTIFICATION

### *Directorate structure of A&PD*

3. The approved directorate establishment of A&PD comprises three posts, namely, one Deputy Director of Legal Aid (DDLA) (DL3) and one APLAC (DL1) at the Hong Kong Office (HKO) (located at the Queensway Government Offices), and one Deputy Principal Legal Aid Counsel (DPLAC) (DL2) at the Kowloon Branch Office (KBO) (located at the Mongkok Government Offices). At present, KBO handles about half of the workload of A&PD.

4. The prime duties and responsibilities of an APLAC in A&PD are summarised as follows -

- (a) taking charge of customer service;
- (b) monitoring of assigned-out cases;
- (c) monitoring the implementation of performance pledges;
- (d) implementing improvement measures to legal aid services;
- (e) handling complaints and media enquiries;
- (f) handling complex and sensitive cases; and
- (g) staff supervision and training

Encl. 1 We set out at Enclosure 1 details of these duties and responsibilities. On the other hand, the duties of the other two more senior directorate officers in A&PD, viz. DDLA and DPLAC, relate more to the strategic planning and formulation of policy matters concerning the administration of the legal aid services and the work of the Division, though they also handle or give advice on sensitive and high profile cases.

### *Problems faced by A&PD and the recommendations of the Quality Improvement Team*

Encl. 2 5. During the past ten years, A&PD has experienced a steady increase in workload. The number of legal aid applications received by the Division has gradually increased from about 18 000 cases per year in 1991 to almost 21 000 cases in 1995. Such increase accelerated in the last five years with a record high of 31 000 cases in 1999. We set out at Enclosure 2 the number of civil legal aid applications received by A&PD from 1991 to 2000.

6. In addition, there were concerns about the quality of legal aid service particularly in the areas of processing time, monitoring of assigned-out cases and customer service. Furthermore, cases nowadays are becoming more sensitive and complicated than before. This and the increasing workload have resulted in the

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need for greater directorate attention and involvement, and for the directorate officers to interface more with the media and community groups. Accordingly, the supervisory and management responsibilities of the directorate officers have also increased.

7. The above problems faced by A&PD are particularly serious in KBO where there is only one directorate officer (the DPLAC) overseeing both the day-to-day operation of the office and the strategic planning and policy issues of the Division. Since KBO is geographically separated from the Headquarters, to maintain the efficient operation of the office and to improve the quality of its services, there is a need for an APLAC to underpin the DPLAC at KBO.

8. To cope with the increase in the volume and complexity of cases and to address concerns about the quality of legal aid service, LAD set up a Quality Improvement Team (QIT) to carry out a process re-engineering study in 1997. QIT recommended a series of improvement measures, including the taking over of the means testing work from the Social Welfare Department, introduction of an enquiry and one-stop service, strengthening the directorate supervisory structure of A&PD as well as re-organising the HKO and KBO into teams.

#### *Interim measures*

9. To expeditiously address the problems faced by A&PD and to implement the QIT's recommendations, LAD made the following interim arrangements in April 1997 -

- (a) temporary redeployment of one APLAC from the LD to the HKO of A&PD. This arrangement was made possible through the temporary amalgamation of the Commercial, Admiralty and Professional Negligence Section and the Personal Injury Litigation Section in LD. The additional APLAC has been assigned to head a new section in HKO responsible for processing and monitoring of personal injury cases which are usually of a more complex nature; and
- (b) temporary redeployment of one APLAC from the Official Solicitor Office (OSO) to underpin the DPLAC in KBO.

Owing to the increasing importance and complexity of the work of the Official Solicitor (OS) in recent years, the temporary arrangement in item (b) above ceased in September 2000. Since then, the post has been returned to OSO to restore the appropriate level of support to DLA in the discharge of OS' duties. In order to maintain the necessary support to the DPLAC in KBO since April 1997, DLA redeployed temporarily another APLAC from the Insolvency, Costing and Enforcement Section (ICE) of LD (APLAC/ICE) to KBO since September 2000 as a stop-gap measure.

10. With the above temporary redeployments, LAD has been able to achieve the following improvements in the provision of legal aid services -

- (a) provision of a more customer-focused service in A&PD, including the setting up of Customer Service Units to strengthen its enquiry service and complaint handling procedure;
- (b) introduction of a performance pledge on processing time in November 1997, as a result of which over 80% of civil legal aid applications in the past four years were processed within three months (the standard processing time) and the number of complaints on processing time has dropped from 24 in 1997 to eight in 2000;
- (c) raising the target on processing civil legal aid applications within the standard processing time from 80% to 85% as from January 2001;
- (d) strengthening the monitoring of assigned-out cases; and
- (e) reduction in the number of complaints received by the Department from 154 in 1998 to 127 in 2000.

#### ***Review of the existing arrangements***

11. The temporary redeployment of the two APLACs mentioned above has greatly contributed to the efficient operation of the A&PD as a whole and proved to be effective in sustaining the improvements introduced in recent years as described in paragraph 10 above and in addressing the concerns about the quality of legal aid service. As the amalgamation of the former Commercial, Admiralty and Professional Negligence Section with the Personal Injury Litigation Section has also contributed to efficient delivery of litigation services by LD, DLA considers that the temporary redeployment of the APLAC from LD to HKO of A&PD can be made permanent.

12. As regards the interim arrangement for KBO, DLA has concluded that it is not possible to permanently redeploy to it the APLAC post from OSO or ICE or indeed from any other sections without affecting the effective and proper functioning of the Department and the quality of work of the other sections.

13. In the case of OSO, it is considered essential to have an APLAC to ensure that the work of OSO can be effectively performed and closely supervised, particularly when it operates in an independent office in Wanchai which is geographically separate from the Headquarters of LAD. DLA, in his capacity as OS, relies to a great extent upon the APLAC in the OSO to manage the day-to-day

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Encl. 3 operation of the office. Experience with the temporary redeployment mentioned in paragraph 9 above shows that without an intermediary rank of directorate officer, there is over reliance on the OS for instruction and guidance. This will result in the OS not being able to devote more time for important tasks such as setting targets and objectives for OSO, assigning priorities for the types of cases calling for OS's input, and advising on the course of proceedings or OS's position in sensitive or complex cases. We set out at Enclosure 3 additional information on the work of the OS and the prime duties and responsibilities of the APLAC in OSO. The uniqueness of the role of the OS and the sensitive or fiduciary nature of work are such that assigning out the work to private legal practitioners is neither desirable nor cost-effective.

Encl. 4 14. As regards ICE, the redeployment of the APLAC post to A&PD in September 2000 is intended to be a short-term measure. At present, ICE handles all insolvency cases and provides legal support both for the LD and A&PD in the assessment and taxation of legal costs and the enforcement of unsatisfied judgements and orders for all in-house and assigned-out cases. We set out at Enclosure 4 additional information on the work of ICE and the prime duties and responsibilities of the APLAC in ICE. Since the temporary redeployment of the APLAC post to A&PD in September 2000, the role as the ICE section head is being shared by DDLA/Litigation and DPLAC/Civil Litigation. Experience with the redeployment shows that this arrangement is unsatisfactory because -

- (a) although DDLA/Litigation and DPLAC/Civil Litigation are sharing out the duties of APLAC/ICE as far as possible, given their own specific areas of responsibilities and existing workload, they cannot assume APLAC/ICE's responsibilities related to customer service and other specific duties similar to those mentioned in paragraph 4 above;
- (b) the workload of ICE is increasing in recent years. For instance, the caseload of the Insolvency, Costing and Enforcement Units (three of the five units in ICE) has increased by 23%, 40% and 56% respectively over the past four years, while the amount of debts and costs recovered by the Enforcement Unit has also increased by 18% during the same period;
- (c) apart from conducting casework as an experienced personal injury litigator, DPLAC/Civil Litigation assists DDLA/Litigation in supervising the Personal Injury Litigation Section and Family Litigation Section. In the circumstances, the officer has little capacity to attend to the daily operation of ICE on a permanent basis; and
- (d) both insolvency and costing work, which involve specialised areas of law and substantial sums of moneys, require a permanent directorate officer experienced in these areas of law to supervise the daily operation of ICE and to handle complex or sensitive cases.

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***Need for an additional APLAC post for KBO and permanent redeployment of an APLAC post from LD to HKO***

15. The present redeployment of one APLAC from ICE to KBO cannot be prolonged without affecting the overall effective operation of LAD. DLA has considered the alternative of reducing the in-house litigation (presently representing approximately 25% of the matrimonial and personal injury legal aid work) and assigning out more work to the private legal practitioners. However, we do not consider it desirable to change this optimum balance between in-house litigation and assigned-out cases given that the present staffing in A&PD can adequately monitor these cases while achieving the benefit of maintaining the experience level of the counsel in LAD through in-house litigation. DLA has therefore concluded that the Department will face enormous difficulty in sustaining the improvements achieved in recent years without the creation of an additional APLAC post for KBO and making the current redeployment of an APLAC from LD to HKO of A&PD permanent. We set out at Enclosures 5 and 6 the original organisation chart as at March 1997 and the proposed organisation chart of LAD respectively. The duty list of the proposed APLACs in A&PD is at Enclosure 7.

Encls.5&6

Encl. 7

**FINANCIAL IMPLICATIONS**

16. The additional notional annual salary cost of the proposed permanent APLAC post at MID-POINT is \$1,213,200. The additional full annual average staff cost of the proposed post, including salaries and staff on-cost, is \$2,117,000. We have included sufficient provision in the 2001-02 Estimates to meet the cost of this proposal. The proposed redeployment of a permanent APLAC post from LD to A&PD is cost neutral.

17. In addition, the proposed creation of a permanent APLAC post in A&PD will necessitate the creation of one Personal Secretary II post (MPS 3-15) at a notional annual mid-point salary cost of \$181,920 and a full annual average staff cost of \$320,000. We have also included sufficient provision in the 2001-02 Estimates to meet the cost of this post.

**BACKGROUND INFORMATION**

18. LAD comprises three divisions, namely, the Policy and Administration Division, LD and A&PD. Each Division is headed by a DDLA. The DDLA/Policy and Administration is responsible for legal aid policy development, departmental administration and the provision of general support services. The DDLA/Litigation supervises the Civil Litigation Sub-division and the Criminal Litigation Sub-division. The former sub-division is responsible for

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conducting in-house litigation for aided persons, while the latter for processing applications for criminal legal aid, assigning counsel and solicitors and monitoring their performance, as well as acting for aided persons as instructing solicitors. The DDLA/Application and Processing is responsible for processing civil legal aid applications, assigning counsel and solicitors and monitoring their performance and progress of assigned-out cases. Broadly speaking, APLACs in LAD assume the position of section heads. Apart from handling some of the sensitive and high profile cases, they supervise the day-to-day operation of their sections.

### **CONSULTATION WITH LEGISLATIVE COUNCIL PANEL**

19. We consulted the Legislative Council Panel on Administration of Justice and Legal Services on the proposals at its meeting on 20 February 2001. Members expressed concern as to whether the improvements made by LAD in recent years were only achievable with the creation of the APLAC post. In response, DLA explained that the interim measures to improve the operation of A&PD could not be sustained on a long term basis without the creation of an additional APLAC post. Members of the Panel had no objection to the proposals being put forward to the Establishment Subcommittee.

### **CIVIL SERVICE BUREAU COMMENTS**

20. Chief Secretary for Administration's Office has considered carefully various means to provide the required directorate professional support to meet the service need. Having regard to the need to maintain the improved quality of services by LAD, Civil Service Bureau considers the proposal justified and the grading and ranking of the proposed posts appropriate.

### **ADVICE OF THE STANDING COMMITTEE ON DIRECTORATE SALARIES AND CONDITIONS OF SERVICE**

21. The Standing Committee on Directorate Salaries and Conditions of Service has advised that the grading proposed for the post would be appropriate if the post was to be created.

**Additional information on the  
prime duties and responsibilities of an APLAC in A&PD**

The prime duties and responsibilities of an APLAC in A&PD are -

(a) Taking charge of customer service

As Assistant Customer Service Manager, the APLAC is responsible for instilling and maintaining a customer service culture amongst the various grades of staff in A&PD. This includes the provision of guidance and advice to the Customer Service Officers, and the supervision of the operation of the Information and Advisory Services Unit and the One-Stop Service for the processing of legal aid applications in the two offices.

(b) Monitoring of assigned-out cases

LAD is in the course of implementing the recommendations of the Departmental Working Group on Monitoring Assigned-out Cases to strengthen the monitoring of assigned-out cases, which include regularly checking the progress of such cases, issuing guidelines to professional officers from time to time to ensure consistency in approach and standard of monitoring, and updating of guidance notes to legal aid practitioners. The main task of the APLAC is to ensure that the guidelines in monitoring are complied with.

(c) Monitoring the implementation of performance pledges

The time for processing legal aid application is one of the most important indicators of the quality of service provided by LAD from the public's perspective. There have been calls to shorten the processing time. In response, LAD introduced a performance pledge in November 1997. The policy initiatives announced in the 2000 Policy Address have further raised the target on percentage of civil legal aid applications processed within three months from date of application from 80% to 85% in response to the call for improvement to the service by public, including the Legal Aid Services Council. This will necessitate tighter supervision and monitoring by APLAC to ensure that the performance pledge is met.

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(d) Implementing improvement measures to legal aid services

Arising from the Legal Aid Policy Review 1997, improvement to the legal aid services has been brought about by amendments to the Legal Aid Ordinance and Regulations. These include widening of the coverage of the legal aid scheme such that 20% more households would become eligible for legal aid and extending legal aid to coroner's proceedings. The APLAC has been assisting the senior directorate in modifying the existing practice and procedures to cope with the new changes and anticipated additional work and to ensure that the revised practice and procedures are complied with.

(e) Handling complaints and media enquiries

Complaints and media enquiries are dealt with by directorate officers to ensure that complaints are handled promptly and properly. The APLAC is required to conduct investigations into the complaints, interview the complainants and conduct all relevant correspondence with the complainants and offices such as The Ombudsman and the Legislative Council Secretariat. As many of the complaints involve either sensitivity or departmental policy or practice, they must be handled by directorate staff who have sufficient experience and are familiar with the operation as well as the policy of the Department.

(f) Handling of complex and sensitive cases

A lot of complex and sensitive cases require personal handling by the senior directorate and APLACs in A&PD. Examples of such cases are the Garley Building Fire, the Pat Sin Range Hill Fire, Po Toi O Village Election and Right of Abode Cases.

(g) Staff supervision and training

APLAC assists the senior directorate in providing guidance and advice to junior staff members and in other administrative duties such as completing staff performance appraisals, distributing work, and approving write-offs according to the level of authority. APLAC's endorsement is required for refusal of legal aid and assignments to private practitioners.

**Enclosure 2 to EC(2001-02)2**

**Number of civil legal aid applications processed in A&PD**

<b>Year</b>	<b>Applications processed</b>
1991	18 056
1992	17 294
1993	19 653
1994	20 105
1995	20 873
1996	25 476
1997	27 440
1998	25 617
1999	31 578
2000	21 736
Percentage of increase in 2000 compared to 1991	20 %

**Additional information on the work of OSO and  
the prime duties and responsibilities of APLAC/OSO**

Under common law, the OS plays an important role in safeguarding the rights and interests of persons under disability (i.e. mentally incapacitated persons and minors). The APLAC/OSO is responsible to the OS for all administrative and litigation matters and handles the more complex, difficult and sensitive cases relating to these individuals. Examples of these cases handled by OSO include -

- (a) acting as next friend or guardian ad litem for any person under a disability of age or mental capacity in proceedings before any Court;
- (b) acting for the estate of deceased defendants;
- (c) representing children in care and protection proceedings;
- (d) acting as committee of the estate of mentally incapacitated persons or as guardian of minors;
- (e) day-to-day administration of trust funds in cases where the OS is appointed trustee; and
- (f) assisting the court in the capacity of adviser or amicus curiae in proceedings whenever called upon by the court.

2. Matrimonial cases in which OS acts as next friend or guardian ad litem for mentally incapacitated persons requiring special skills. It takes up a growing proportion of the total number of cases (from 10.5% in 1998 to 14.5% in 2000).

3. Committee cases are complex in that substantial assets including properties, cash and securities are involved. Much work is required to identify these assets, arrange for their transfer/sale and provide for the maintenance of mentally incapacitated persons.

4. OSO cases usually remain active for a long span of time, such as cases where OS serves as Judicial Trustee, Official Trustee or committee for mental patients. These cases have grown throughout the last three years and the caseload is still building up continuously (from 53 in 1998 to 78 in 2000).

5. The number of active cases on hand has increased from 145 in 1997 to 214 in 2000, representing an increase of 48%. When the APLAC post was returned to OSO in September 2000, the number of active cases was 212 (i.e. an increase of 46% as compared with that in 1997).

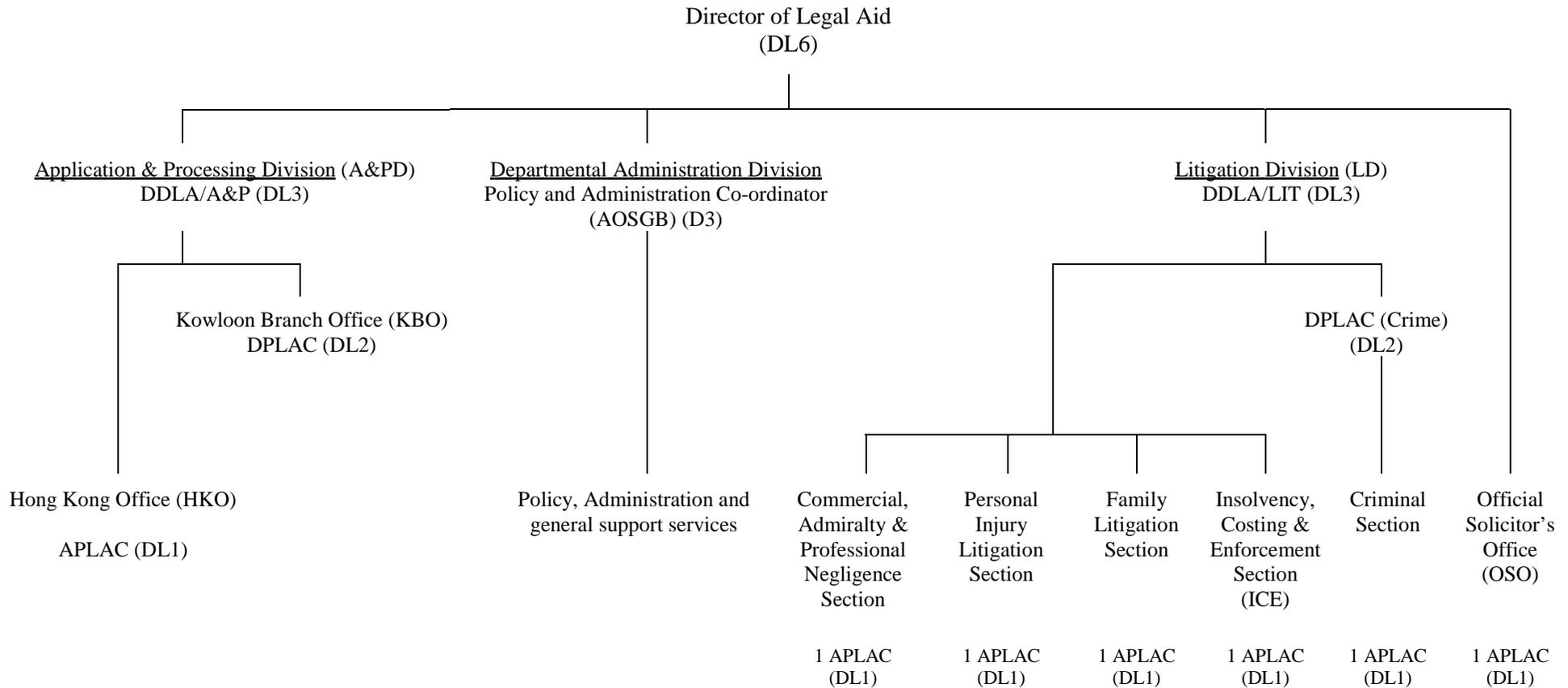
**Additional information on the work of ICE and  
the prime duties and responsibilities of APLAC/ICE**

The APLAC/ICE is responsible for the overall administration and operation of the following five Units each with a different function, and serves as a coordinator of the work of these Units. He also processes applications and conducts litigation of cases in complex or sensitive cases -

- (a) The *Insolvency Unit* processes workers' applications, litigates cases referred by the Labour Department for recovery of employment entitlements or judgement debts by taking winding-up and bankruptcy proceedings against employers and debtors, and deals with cases to be referred to the Protection of Wages on Insolvency Fund Board.
- (b) The *Costing Unit* deals with assessment and preparation of bills of costs, and litigation at taxation hearings.
- (c) The *Enforcement Unit* deals with the enforcement of unsatisfied judgements and orders.
- (d) The *First Charge Unit* deals with registration and discharging of DLA's First Charge.
- (e) The *Probate Unit* deals with the obtaining of grants of representation for fatal cases litigated in-house and entering caveats in contentious probate matters.

2. In addition, APLAC/ICE also performs the specific duties related to customer service and the duties mentioned in paragraph 4 of the paper (with the exception of monitoring of assigned-out cases).

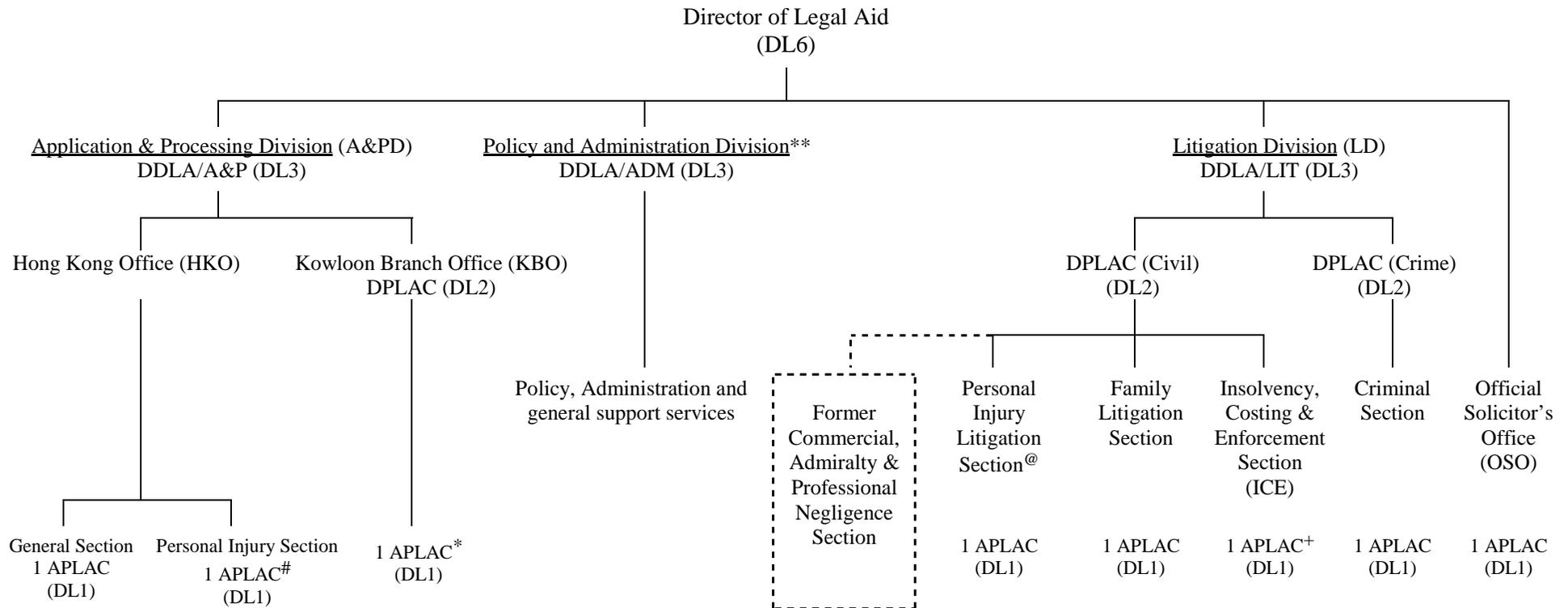
**Original Organisation Chart of the Legal Aid Department**  
(as at March 1997)



**Legend:**

DDLA	Deputy Director of Legal Aid
DPLAC	Deputy Principal Legal Aid Counsel
APLAC	Assistant Principal Legal Aid Counsel
AOSGB	Administrative Officer Staff Grade B

**Proposed Organisation Chart of the Legal Aid Department**



- Legend:**
- \*\* Renamed as Policy and Administration Division in December 1999.
  - # Post proposed to be permanently redeployed from the former Commercial, Admiralty & Professional Negligence Section of the Litigation Division.
  - \* Proposed APLAC post to be created. Duties currently performed by APLAC on loan from ICE.
  - @ Taking over the work of the former Commercial, Admiralty & Professional Negligence Section since April 1997.
  - + Post redeployed to KBO of A&PD since September 2000.
- DDLA Deputy Director of Legal Aid  
 DPLAC Deputy Principal Legal Aid Counsel  
 APLAC Assistant Principal Legal Aid Counsel

**Duty list of  
the proposed APLACs in A&PD**

1. Taking charge of a section or an office within the A&PD comprising teams of professional officers, Law Clerks and general grades officers and attending to their career development and welfare;
2. acting as Assistant Customer Service Manager to supervise the provision of customer service in a section or an office, including the monitoring of performance target as laid down in the performance pledges, and handling complaints or enquires referred by Legislative Council, District Councils, The Ombudsman, the Legal Aid Services Council, the mass media, other organisations and members of the public;
3. processing civil applications for legal aid on complicated and sensitive cases and monitoring the same once legal aid has been granted;
4. approving assignment of cases to solicitors and counsel in private practice, or in-house litigation sections and advising professional officers in the monitoring of such cases;
5. considering and approving recommendations not to take cost recovery action, waiving first charge and handling costing queries and taxation matters; and
6. assisting the senior directorate in all policy matters concerning A&PD and undertake such work or may be directed and delegated by the senior directorate.