

For discussion
on 20.2.2001

**Panel on Administration of Justice and Legal Services of
The Legislative Council**

**Proposed Creation of
One Permanent Post of Assistant Principal Legal Aid Counsel
and to Regularise the Directorate Structure of the
Application and Processing Division of the Legal Aid Department**

PURPOSE

This paper seeks Members' support to the proposed creation of a permanent post of Assistant Principal Legal Aid Counsel (APLAC) (at DL1 on the legal directorate scale) and to regularise the existing directorate structure of the Application and Processing Division (A&PD) of the Legal Aid Department (LAD). Our objective is to improve the span of directorate supervision and to ensure the efficient operation of the A&PD.

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).

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 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. Broadly speaking, APLACs in LAD assume the position of section heads. Their duties are mainly operational and administrative in that, apart from handling some of the sensitive and high profile cases, they supervise the day-to-day operation of their sections. We set out at Enclosure 1 the duty list of the APLAC in A&PD. Her prime duties and responsibilities are -

- (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

We set out at Enclosure 2 details of these duties and responsibilities. On the other hand, senior directorate officers' duties relate more to the strategic planning and formulation of policy matters concerning the administration of the legal aid services and the work of the A&PD, though they also handle or give advice on sensitive and high profile cases.

5. Over the years, A&PD has experienced a significant growth in the volume and complexity of its case work. For instance, the total civil legal aid applications processed by A&PD each year rose from 18 056 in 1991 to 21 736 in 2000, representing an increase of 20%. In addition, A&PD has also faced calls for better quality of service particularly in the areas of shortening processing time, monitoring of assigned-out cases and customer service. The fact that there are more sensitive cases than before has resulted in the need for greater directorate attention and involvement, and for the directorate officers to interface with the media and community groups. Accordingly, the supervisory and management responsibilities of the directorate officers have also increased. This is particularly so for the DPLAC in KBO as the latter is geographically separated from the Headquarters and therefore decisions on matters relating to its day-to-day operation have to be made independently by the DPLAC. It may not always be feasible or practicable to refer such matters to a senior directorate officer at the Headquarters for decision. An APLAC is therefore required to underpin the DPLAC at KBO.

Interim Measures

6. To cope with the demands for additional directorate support, and to implement the recommendations of a Quality Improvement Team arising from a consultant-led process re-engineering study, DLA had made the following arrangements in April 1997 -

- (a) redeployed temporarily one APLAC from the LD to the HKO of A&PD. The additional APLAC has been assigned to head a newly created section responsible for processing and monitoring of personal injury cases which are of a more complex nature; and
- (b) arranged for the temporary loan 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 loan referred to in item (b) above has ceased in September 2000. Since then, the incumbent has returned to OSO to restore the appropriate level of support to DLA in the discharge of OS's duties. In order to maintain the improved support to the DPLAC in KBO, DLA has 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.

7. The above temporary redeployments have enabled LAD 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 and raising the target on percentage of civil legal aid applications processed within three months from the date of application from 80% to 85% as from January 2001;
- (c) strengthening the monitoring of assigned-out cases; and
- (d) reduction in the number of complaints received by the Department (which has dropped from 154 in 1998 to 127 in 2000).

Review of the existing arrangements

8. 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 7 above. As the redeployment of the APLAC post from LD to HKO of A&PD was only made possible by merging the former Commercial, Admiralty and Professional Negligence Section with the Personal Injury Litigation Section because of their largely similar nature of the core work, DLA considers that the temporary redeployment arrangement can be made permanent.

9. However, having critically reviewed the 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.

10. In the case of OSO, as it operates as an independent office and is geographically situated in Hopewell Centre and separated from the Headquarters of LAD, it is considered essential to have an APLAC to ensure that the work of OSO can be effectively and closely supervised. DLA, in his capacity of OS, relies to a great extent upon the APLAC in the OSO to manage the day-to-day operation of the office. Without an intermediary rank of directorate officer, there will be 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.

11. 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. Since the 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. 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 existing workload, they cannot assume her responsibilities related to customer service and other specific duties similar to those mentioned in paragraph 4 above (with the exception of monitoring of assigned-out cases);
- (b) the work of the Insolvency Unit (one of the units in ICE) which handles sensitive cases such as wage claims of employees against insolvent employers, requires the special care and attention of an APLAC;
- (c) 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;
- (d) 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, she has little capacity to attend to the daily operation of ICE on a permanent basis; and
- (e) both insolvency and costing work involve specialised areas of law which require the close attention of a permanent directorate officer.

Need for additional APLAC posts

12. In view of the increasing volume and complexity of work of A&PD and the inability of LD to release the APLAC in ICE to A&PD on a permanent basis, DLA considers it necessary to create an additional APLAC post for A&PD to replace the one currently redeployed to KBO which will then be returned to ICE. 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 but concluded that this is not desirable. This is because assigning out more cases would correspondingly increase the monitoring responsibility of A&PD, thereby putting further pressure on the Division. Moreover, it would dilute the experience of the counsel in LAD. In addition, DLA proposes to formalise the current redeployment of an APLAC from LD to HKO of A&PD by making the arrangement permanent as mentioned in paragraph 8 above. We set out at Enclosure 5 the proposed organisation chart of LAD.

FINANCIAL IMPLICATIONS

13. 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 2000-01 Estimates to meet the cost of this proposal. The proposed redeployment of a permanent APLAC post from LD to A&PD is cost neutral.

14. 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 shall fill the post through internal redeployment within the Administration.

BACKGROUND INFORMATION

15. LAD comprises three divisions, namely, the Policy and Administration Division, LD and A&PD. Each Division is headed by a Deputy Director. 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 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.

ADVICE SOUGHT

16. Members are requested to support the proposal. The proposed APLAC post will be created through the Establishment Sub-committee in the normal way.

**Duties and responsibilities of
the APLAC 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 Chief Executive's Office, 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.
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

**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 his or her section. In A&PD, the duties include 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. As a result, the number of complaints on delay in processing has dropped significantly from 34 in 1997 to 8 in 2000. Such achievement in meeting public aspiration has been made possible with the redeployment of the two APLAC posts to HKO and KBO. 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.

- (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 would have sufficient experience and be familiar with the operation as well as the policy of the Department. Although the number of complaints has dropped from 154 in 1998 to 127 in 2000, the majority of the complaints relates to cases handled by A&PD.
- (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.

**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. 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).

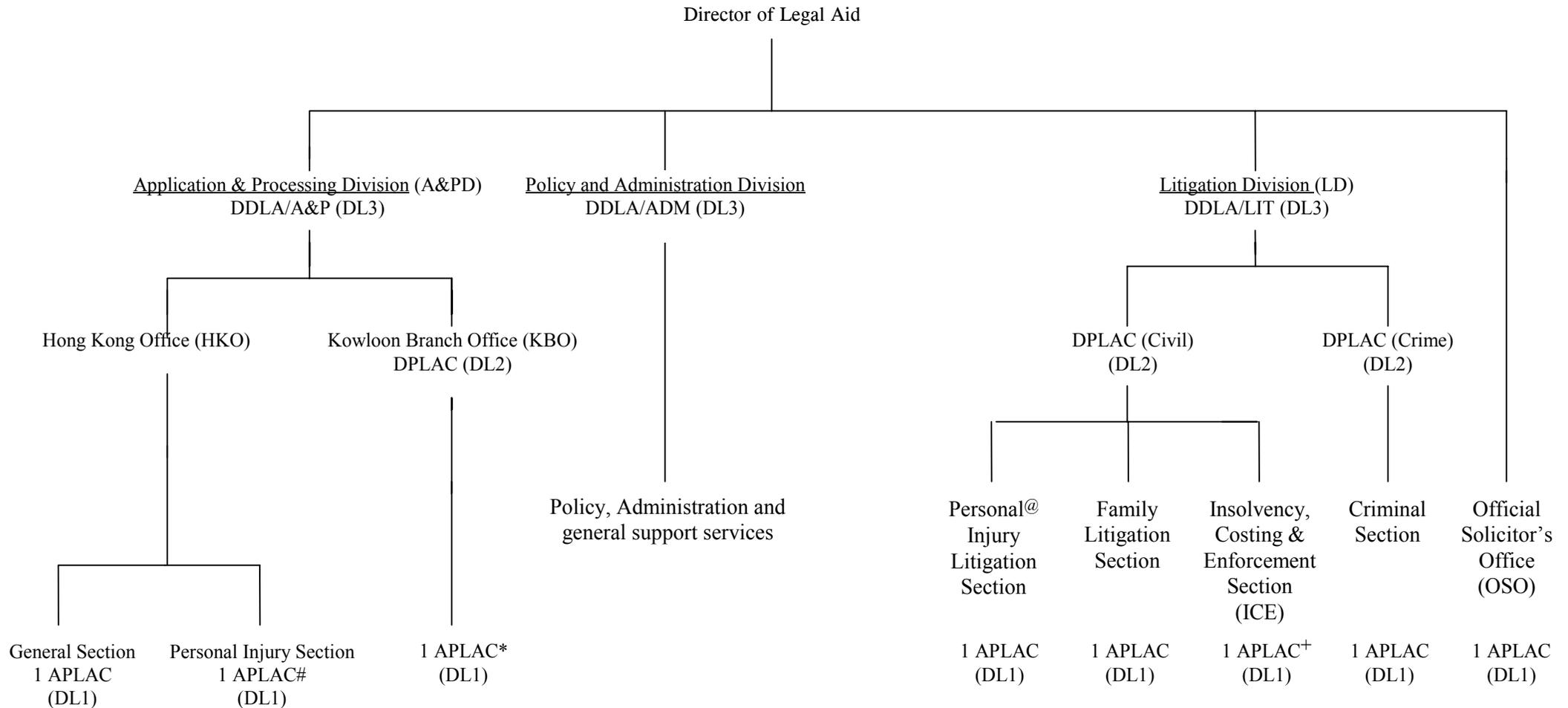
**Additional information on the work of ICE and
the prime duties and responsibilities of APLAC/ICE**

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:

- (a) The ***Insolvency Unit*** processes workers applications, litigates cases referred by the Labour Department for recovery of employment entitlements and judgement debts by taking winding-up and bankruptcy proceedings against employers, 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 attendance 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).

Proposed Organisation Chart of the Legal Aid Department



Note : * Proposed APLAC post to be created. Duties currently performed by APLAC on loan from ICE.
 # Post redeployed from the Commercial, Admiralty & Professional Negligence Section of the Litigation Division since April 1997
 + Post redeployed to KBO of A&PD since September 2000
 @ Taking over the work of the former Commercial, Admiralty & Professional Negligence Section since April 1997