

## **Chapter XIX : Central Administration and Other Services**

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### **Legal Aid**

19.1 Miss Margaret NG declared interest that she had been assigned cases by Legal Aid Department (LAD) to act as counsel for the aided persons.

19.2 Miss Margaret NG noted in a written reply that out of 76 professionally qualified lawyers in LAD, 32 were responsible for handling litigation relating to personal injury, family, insolvency and crime. She enquired about the duties of the remaining 44 lawyers. The Director of Legal Aid (DLA) undertook to provide information after the meeting on the number of these other LAD lawyers and their duties by ranks.

19.3 Ms Audrey EU noted that there were only nine in-house lawyers in LAD responsible for handling criminal litigation as majority of the work had been assigned to private legal practitioners. She however also noted that there were over 100 in-house lawyers in the Department of Justice (D of J) responsible for prosecution work with a low percentage of cases being briefed out. In this connection, she enquired if a cost comparison had ever been made to assess the effectiveness of the resources deployment arrangements in the two Departments. Miss Margaret NG remarked that a cost comparison exercise would shed light on the cost-effectiveness in using public money.

19.4 DLA confirmed that LAD had not conducted cost comparison as referred to by Ms EU. The Director of Administration (D of Admin) said that in view of the different nature of work and responsibilities involved in undertaking prosecution and handling legal aid cases, a cost comparison exercise as suggested by Ms EU might not be feasible or meaningful. Nevertheless he undertook to convey Ms EU's request to D of J for consideration whether a cost comparison between the two Departments could be conducted on comparable cases.

19.5 Miss Margaret NG shared Ms Audrey EU's concern and remarked that the much larger number of counsels for handling criminal litigation in D of J was indicative of the much abundant resources available to D of J than LAD, and hence might cause injustice to legal aid applicants.

19.6 In response, D of Admin reiterated that LAD would consider every application on its own merits. Legal aid would be granted to applicants who met the means test and merits test. He assured members that all eligible persons would not be deprived of legal aid due to lack of funds since provision for legal

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aid costs was not cash limited. Supplementary provision could be sought if necessary so that the grant of legal aid would not be prejudiced by financial constraints.

19.7 Noting that only 14 legal aid certificates in respect of the right of abode litigation (involving a litigation expenditure of only \$15 million) were granted out of a total of 881 legal aid applications in the past two years, Miss Margaret NG asked whether the low success rate was a result of inadequate provision in legal aid costs. In addition, she pointed out that the arrangement adopted by LAD to provide legal aid to representative cases for right of abode litigation was unsatisfactory since past experience had demonstrated that the court's ruling could not be applied to other similar cases where the applicants were not identified in the representative cases. She stressed that the right of legal aid applicants should not be compromised for achieving savings and cost-effectiveness in provision of legal aid service.

19.8 In reply, DLA pointed out that the arrangement for handling right of abode legal aid cases by selecting representative cases had been discussed by the Panel on Administration of Justice and Legal Services . DLA explained that as the court could decide on whether priority should be given to certain cases and whether similar cases should be grouped for the purpose of conducting hearings or otherwise stayed pending the disposal of other representative cases, legal aid costs might not necessarily increase even if the approach to provide legal aid to right of abode cases had been different. He reiterated that as Subhead 208 "Legal aid costs" was not cash limited, all eligible persons would not be deprived of legal aid due to insufficient funds.

19.9 In view of the hardship faced by employees of insolvent employers, Mr LEE Cheuk-yan urged the Administration to provide more resources in order to expedite the process of legal aid applications in respect of claims for arrears of wages by employees, and to consider setting an enhanced target for processing these applications above the existing performance pledge of processing 85% of civil legal aid applications within three months.

19.10 DLA responded that the new target of processing 85% of legal aid applications within the specified time was applicable to all types of civil cases and had been raised from 80% in January 2001. Normally, cases relating to claims for arrears of wages, as they were relatively straight-forward and simple in nature, could be processed within a much shorter time. He assured members that LAD

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would endeavour to expedite the process of applying regard to the wide variety of civil legal aid cases and the complications and implement measures to shorten the processing time. Nevertheless, complexity of individual cases, it would be difficult and impractical to set separate targets for processing different categories of cases.

19.11 In response to Ms Audrey EU's enquiry about the feasibility of extending the scope of the Supplementary Legal Aid Scheme (SLAS) or setting up new schemes to cover claimants for damages besides personal injury cases, DLA remarked that due to the high chance of winning personal injury litigation, and that huge sums of compensation were usually awarded to the successful litigants, the latter's financial contribution to SLAS fund was significant. Taking into account that SLAS was a self-financing scheme, and the fact that the full impact of the reduction of successful litigants' contribution rate from 15% to 12% had yet to be assessed, the Administration had no plan to expand the scope of SLAS at this stage. Nonetheless, he took note of Ms EU's view and agreed to review the situation at an opportune time.

### **Implementation of the sustainability system**

19.12 Noting that with effect from April 2002, submissions from bureaux and departments to the Chief Secretary's Committee and the Executive Council (ExCo) would have to set out the sustainability implications of the proposals, Ms Emily LAU enquired about the details to be included in the sustainability assessment.

19.13 In response, D of Admin advised that the sustainability assessment system aimed at providing a structured framework to facilitate bureaux and departments to assess the sustainability implications of policy proposals or programmes in respect of their social, economic and environmental impacts on Hong Kong. With the aid of a computer programme, the Sustainable Development Unit would assist bureaux and departments to conduct a comprehensive sustainability assessment on new proposals.

19.14 In reply to Ms LAU's enquiry, D of Admin said that the details on the sustainability assessment would be included in the LegCo Brief or information papers provided to LegCo after the proposal was approved by the ExCo.

19.15 Ms Emily LAU opined that a sustainability assessment should also cover the proposal's political and legal impacts, as well as its implication on individual freedom. She had doubt on the added value of the system on the

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policy making process as policy secretaries should have already taken into consideration all relevant factors when formulating a proposal.

19.16 In response, D of Admin reiterated that the objective of the assessment system was to help bureaux and departments to think wider and deeper into the full implications of their proposals and to highlight important cross-sectoral issues and concerns at an early planning stage so that they could be addressed and taken into account in the decision making process. On Ms LAU's concern about possible delay in policy formulation, D of Admin said that the assessment could be conducted concurrently with other steps in the early stage of policy making. The Administration had conducted trials on the system and found that it only took about two weeks to complete the assessment. As such, the Administration did not envisage that implementation of the sustainability assessment system would cause delay in policy formulation. At the request of Ms LAU, D of Admin undertook to provide an example showing how the assessment was conducted by bureau or department on a proposal and a form or table used in the process.

### **Efficiency Unit**

19.17 Referring to the Administration's target to reduce the civil service establishment to 181 000 in 2002-03, Mr IP Kwok-him enquired whether the Administration had further plan of downsizing the civil service. He also asked whether more measures would be introduced to further improve efficiency of the civil service upon implementation of the accountability system for principal officials.

19.18 D of Admin responded that the Secretary for Civil Service would keep in view the need and feasibility of further reducing the civil service establishment beyond the announced target of 181 000. Whether further enhancement in civil service efficiency would be resulted from the implementation of the accountability system would be considered when the details of the accountability system were finalized. In this connection, the Head, Efficiency Unit affirmed the Administration's commitment to promote greater efficiency and productivity within the civil service and that the Efficiency Unit would continue to achieve this target by exploring the use of technology, re-engineering of processes, and scope for outsourcing public service.

### **Value for money audits**

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19.19 Noting that huge expenditure was incurred in recent years for rewards and procurement of special services (R&SS) by the Hong Kong Police Force, Mr James TO asked whether the Audit Commission would conduct in-depth investigation on the expenditure spent. He opined that transactions charged to R&SS involving large sum of money should be subject to enhanced vetting by the Commission to ensure that public funds were well spent in accordance with the value for money principle.

19.20 The Director of Audit (D of A) affirmed the Commission's commitment in auditing public expenditure to ensure the proper use of public funds. In respect of audit of expenditure for purchase of equipment under R&SS, he pointed out that the Commission would not simply rely on justifications provided by responsible officers on the merits of the cases and documents on claims made by the concerned officers, where possible, it would check the items purchased and other relevant information relating to the transactions. As regard expenditure on informers' services, D of A advised that the same stringent procedures were applied. However, he cautioned that while the Commission would strive to do in-depth audits, at times, this might not be possible as concerned staff might be exposed to danger when tracking confidential information and the interests of the informers might also be jeopardized.

### **Independent Commission Against Corruption**

19.21 Ms Emily LAU enquired about the details of the research undertaken by the Independent Commission Against Corruption (ICAC) on the desirability of proscribing by statute the offence of the misuse of public office, including the reasons for conducting such a research, its scope, findings and recommendations.

19.22 In reply, the Commissioner of ICAC (C, ICAC) advised that in view of the difficulty in taking prosecution against misconduct of public officers under existing anti-corruption legislation and successful convictions of the offence under the common law in recent years, the ICAC decided in 2000 to undertake a research study on the desirability of codifying the common law offence which included the examination of relevant legislation in over 20 jurisdictions having proscribed similar offence in their laws. The research was completed in June 2001 and a detailed report recommending codification had been endorsed by the Operations Review Committee and the Advisory Committee on Corruption

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and forwarded to the Administration for consideration. Upon request of Ms LAU, C, ICAC agreed to provide the names of the 20 jurisdictions covered in the research for members' reference.

19.23 On Ms LAU's enquiry about the number of convictions of the offence of misconduct of public officers under the common law, C, ICAC advised that there were a few successful cases in 2001. Indeed, one successful conviction in 2000 was under appeal to the Court of Final Appeal and hearing would be held in May 2002.

19.24 D of Admin added that an inter-departmental working group comprising representatives of the Administration Wing, Civil Service Bureau, D of J, and ICAC had been formed to study the proposal. He advised that the working group would consider related issues taking into account successful convictions of the offence under the common law and result of the appeal.

19.25 As to Ms LAU's enquiry on whether public consultation would be conducted on the subject, D of Admin said that as the working group had only commenced its work for a few months, it was premature to answer the question. He stressed that should the Administration propose legislative amendments, it would consult the public and the LegCo.

19.26 Mr James TO stressed the importance for ICAC to enhance cooperation with its Mainland counterparts in undertaking enforcement operations, investigation and prevention against corruption in view of the rapid growth in cross-boundary business activities in recent years. He asked whether ICAC had encountered particular difficulties in its work involving Mainland companies or organizations, which had required high level assistance from the Administration, such as the Chief Executive, in order to secure cooperation from the Mainland authorities.

19.27 C, ICAC responded that ICAC had been maintaining close liaison and cooperation with its Mainland counterparts including joint efforts in investigation, organization of promotional activities and educational programmes on prevention of corruption. He cited ICAC's joint production of a legal guide for cross-border businessmen with the Shanghai Municipal People's Procuratorate and the broadcast of an ICAC television series on anti-corruption in

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21 Mainland provinces as examples. He pointed out that ICAC had not encountered particular difficulties in investigating corruption cases involving Mainland companies. Nonetheless, due to different legal systems of Hong Kong and the Mainland, there had been differences in approaches and practices in undertaking investigation. Such differences also arose in cooperation with counterparts of overseas jurisdictions.