

立法會
Legislative Council

Ref : CB2/SS/10/08

LC Paper No. CB(2)2124/08-09
(These minutes have been seen
by the Administration)

**Subcommittee on Proposed Resolution under
Section 7(a) of the Legal Aid Ordinance (Cap. 91)**

**Minutes of meeting
held on Monday, 4 May 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon LEE Cheuk-yan (Chairman)
Dr Hon Margaret NG
Hon LI Fung-ying, BBS, JP
Hon Audrey EU, SC, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun
- Member absent** : Hon Albert HO Chun-yan
- Public Officers attending** : Item II

Mr Benjamin CHEUNG King-man
Director of Legal Aid

Miss Christine CHOW Kam-yuk
Principal Assistant Secretary for Home Affairs
- Clerk in attendance** : Miss Flora TAI
Chief Council Secretary (2)3
- Staff in attendance** : Mr YICK Wing-kin
Assistant Legal Adviser 8

Ms Amy YU
Senior Council Secretary (2)3
-

Action

I. Election of Chairman

Mr LEE Cheuk-yan was elected Chairman of the Subcommittee.

II. Meeting with the Administration

[LC Paper Nos. CB(2)1152/08-09(08), CB(3)482/08-09 and LS55/08-09]

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Follow-up actions

Admin

3. The Administration was requested to provide the following information -

(a) net gain in the fund balance of the Supplementary Legal Aid Scheme (SLAS) in the past five years; and

(b) number of applications to SLAS and cases aided under SLAS in the past five years.

Admin

4. The Administration also undertook to review the methodology on collecting information on private litigation costs in the context of the current five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants (five-yearly review).

Clerk

5. Members agreed to refer the following issues to the Panel on Administration of Justice and Legal Services (the AJLS Panel) for follow-up -

(a) review of the mechanism for conducting biennial reviews of financial eligibility limits of legal aid applicants, in particular the viable means for collecting information on private litigation costs; and

(b) review of the policy concerning provision of publicly-funded legal aid services to employees in respect of employees' compensation claims and employer insolvency cases.

Clerk

6. Members also suggested that the AJLS Panel should invite the Panel on Manpower to join future discussions on policy issues relating to legal aid and that the views of the Panel on Manpower should be considered in the review in paragraph 5(b) above.

Clerk

7. The Clerk was requested to ascertain and provide for members' reference past information provided by the Administration in relation to the percentage of households covered by the two legal aid schemes.

III. Any other business

8. In response to the Chairman's enquiry, the legal adviser to the Subcommittee confirmed that the legal and drafting aspects of the proposed resolution under Section 7(a) of the Legal Aid Ordinance (Cap. 91) were in order. Members supported the Administration giving fresh notice to move the proposed resolution at the Council meeting on 27 May 2009. Members agreed that the Subcommittee would report its deliberations to the House Committee on 15 May 2009.

9. Members noted that subject to the Legislative Council's approval of the proposed resolution, the revised financial eligibility limits for legal aid applicants would take effect upon the gazettal of the resolution on 29 May 2009.

10. The meeting ended at 12:02 pm.

Council Business Division 2
Legislative Council Secretariat
6 July 2009

**Proceedings of meeting of the
Subcommittee on Proposed Resolution under
Section 7(a) of the Legal Aid Ordinance (Cap. 91)
on Monday, 4 May 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000133 - 000212	Mr LEE Cheuk-yan Dr Margaret NG Ms Audrey EU	Election of Chairman	
000213 - 000334	Chairman	Opening remarks	
000335 - 000542	Administration	Briefing by the Administration on the proposed resolution under section 7(a) of the Legal Aid Ordinance (Cap. 91) to adjust the financial eligibility limits of legal aid applicants.	
000543 - 000900	Ms Audrey EU Chairman Administration ALA8	<p>Ms Audrey EU's questions on whether movements in Consumer Price Index (C) (CPI(C)) was the only factor taken into account in the annual review of financial eligibility limits, and whether the Administration had discretionary power to determine the extent of adjustment to be made to these limits.</p> <p>The Administration's response that the annual review only took account of changes in CPI(C), and the proposed amendments to the financial limits were technical amendments to reflect the change in CPI(C) during the relevant reference period.</p> <p>The legal adviser's confirmation of the Administration's explanation.</p>	
000901 - 001233	Administration Ms Audrey EU Chairman	<p>Ms Audrey EU's enquiries on -</p> <p>(a) the current fund balance of the Supplementary Legal Aid Scheme (SLAS); and</p> <p>(b) the net gain in the SLAS fund and the number of cases aided under SLAS in the past two years.</p> <p>The Administration's response that -</p> <p>(a) the fund balance of SLAS was once over \$100 million. Following a huge payout of legal costs for a failed claim, the current fund balance was around \$88 million to \$90 million, which was the accumulated balance since the inception of SLAS in 1984; and</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>(b) there were some 100 to 200 applications to SLAS each year.</p> <p>Ms EU's concern over the low level of fund balance of SLAS.</p> <p>The Administration's advice that -</p> <p>(a) the current contribution rates under SLAS were 10%, and 6% if the claim was settled before trial and delivery of brief to counsel; and</p> <p>(b) diverse views were received on the level of the existing contribution rates under SLAS.</p> <p>The Administration was requested to provide the following information -</p> <p>(a) net gain in the SLAS fund in the past five years; and</p> <p>(b) number of applications to SLAS and cases aided under SLAS, in the past five years.</p>	<p>Admin to provide requisite information (para 3 of minutes)</p>
001234 - 002357	Dr Margaret NG Administration Chairman	<p>Dr Margaret NG's remark that the Administration had discretion to decide whether to make adjustment to the financial eligibility limits in accordance with the movement in CPI(C), pointing out that the Administration had decided in an annual review to withhold the downward adjustment of the financial eligibility limits having regard to the minor movement in consumer prices during the reference period.</p> <p>The Administration's response that in respect of the case cited by Dr NG, the adjustment was deferred on consideration that frequent adjustments to reflect small changes could cause confusion to the public.</p> <p>Dr NG's expression of views that -</p> <p>(a) the Administration did not have any reliable basis for proposing any change to the financial eligibility limits to reflect changes in private litigation costs, considering that the Administration had failed to obtain sufficient evidence of changes in private litigation costs from the three information sources, viz. the two legal professional bodies, the Judiciary and the Legal Aid Department (LAD), in the past biennial reviews. A review should be conducted on the mechanism of the biennial review, including channels for collecting relevant data; and</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>(b) a review should also be conducted on the principles for determining the level of contribution rates under SLAS.</p> <p>In respect of (a), the Administration's response that it had explored whether there were other viable means for collecting the requisite information on litigation costs but was not able to come up with any.</p>	
002358 - 003339	Dr Priscilla LEUNG Chairman Administration Dr Margaret NG	<p>Dr Priscilla LEUNG's enquiries on -</p> <p>(a) number of Members who had expressed the view to the Administration that the contribution rates under SLAS were too low; and</p> <p>(b) progress of the five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants (five-yearly review).</p> <p>The Administration's response that -</p> <p>(a) there were views that the existing contribution rates should be lowered. On the other hand, some Members expressed the view that the existing contribution rates should be raised so that the funding of SLAS could be increased and more cases could be funded under the Scheme, but it could not ascertain the number of such Members; and</p> <p>(b) as reported to the Panel on Administration of Justice and Legal Services (the AJLS Panel) at its meeting on 30 March 2009, the Administration was examining the relevant implications of various proposals and would revert to the Panel on its recommendations on the five-yearly review as soon as practicable.</p> <p>Dr LEUNG's remark that there was concern among legal practitioners about the lack of transparency in LAD's mechanism for assigning legal aid cases to lawyers. Her suggestion that information on legal aid cases assigned to lawyers be made available for public information.</p> <p>The Administration's response that the criteria for assignment of legal aid work to counsel or solicitors were available for public information on LAD's website. In general, the selection was based on the level of experience and expertise of the practitioners concerned and the type and complexity of the particular case. LAD would also endeavour to assign an aided party with the counsel/solicitor of his/her choice as far as possible.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
003340 - 004549	Mr IP Wai-ming Chairman Dr Margaret NG Administration	<p>Mr IP Wai-ming's view that the financial eligibility limit for the Ordinary Legal Aid Scheme (OLAS) was too low even after the proposed upward adjustment. His concern that many employees had failed to obtain legal aid in employees' compensation claims and employer insolvency cases as they could not pass the means test.</p> <p>Mr IP's elaboration that for cases of employer insolvency, employees concerned would need to present a bankruptcy or winding-up petition against their insolvent employers before they could apply for ex gratia payment from the Protection of Wages on Insolvency Fund and/or recover debts owed by their insolvent employers. His view that the Administration should introduce measures to help these employees obtain legal aid in filing the bankruptcy or winding-up petition against the insolvent employer.</p> <p>Mr IP's concurrence with the view that the Administration should come up with viable means to obtain information on private litigation costs for the purpose of the biennial review, such as conducting a survey among litigants or legal practitioners.</p> <p>The Administration's response that -</p> <ul style="list-style-type: none"> (a) the biennial review should be based on information collected from reliable sources; and (b) the Administration had attempted to seek assistance from the two legal professional bodies on the actual fees/costs currently charged by legal practitioners but could not obtain such information. In its letter dated 3 December 2008, the Law Society of Hong Kong replied that it did not keep any data on actual litigation costs. On 9 December 2008, the Hong Kong Bar Association also replied that it did not have the information requested. The Administration had also sought assistance from the Judiciary. However, the Judiciary was only able to provide the cost information for a small number of non-legally aided cases which had been taxed. As such, the Judiciary's return could not be regarded as representative of private litigations costs. <p>Members' agreement that issues relating to the mechanism for conducting biennial reviews, in particular the viable means for collecting information on private litigation costs, be referred to the AJLS Panel for follow up.</p>	<p>Clerk to follow up (para 5 of minutes)</p>

Time Marker	Speaker(s)	Subject(s)	Action required
004550 - 004656	Mr Paul TSE Chairman	Mr Paul TSE's comment that the discussion should focus on the financial eligibility limits of OLAS and SLAS.	
004657 - 005121	Ms LI Fung-ying Administration Chairman	<p>Ms LI Fung-ying's concern that many employees could not obtain legal aid in employes' compensation cases owing to failure to pass the means test.</p> <p>In response to Ms LI, the Administration's clarification that the Director of Legal Aid could exercise his discretion to disregard donations received by a legal aid applicant in the assessment of his financial resources.</p> <p>Ms LI also urged the Administration to be more proactive in finding alternative means to ascertain information on private litigation costs for the biennial review, such as by conducting surveys among relevant court users. The Administration undertook to review the methodology on collecting information on private litigation costs in the context of the current five-yearly review and consult the two legal professional bodies on the matter.</p>	<p>Admin to follow up (para 4 of minutes)</p>
005122 - 005241	Mr IP Kwok-him Administration	The Administration's clarification on the information provided by the Judiciary on the median litigation costs of 21 non-legally aided cases.	
005242 - 005828	Dr Margaret NG Chairman	<p>Dr Margaret NG stressed that it was incumbent upon the Administration to obtain relevant data for conducting a meaningful review on the trend of private litigation costs. Otherwise, the biennial review would serve no purpose at all.</p> <p>Provision of information by Dr NG that according to the research report on legal aid systems in selected places prepared by the Legislative Council Secretariat, the legal aid expenditure per capita in Hong Kong was HK\$61, as compared to \$430 in the United Kingdom and \$173 in Ontario of Canada, which threw light on the relatively low level of public expenditure on legal aid in Hong Kong.</p> <p>Dr NG's view that the financial eligibility limits were so low that a vast majority of ordinary workers were denied access to legal aid.</p> <p>The Chairman's suggestion that the AJLS Panel should invite the Panel on Manpower to join future discussions on policy issues relating to legal aid.</p>	<p>Clerk to follow up (para 6 of minutes)</p>

Time Marker	Speaker(s)	Subject(s)	Action required
005829 - 010714	Ms Audrey EU Chairman ALA8 Administration Dr Margaret NG	<p>Ms Audrey EU shared the view that the Administration was duty bound to collect information on private litigation costs from the legal profession for the biennial review. Her suggestion that reference could be made to the taxation rates for lawyers' fees.</p> <p>The Administration's advice that the taxation rates for solicitors' fees had remained unchanged in the last 10 years and there were no similar hourly rates for counsel's fees.</p> <p>Ms EU sought confirmation on whether Members from the legal profession were required under the Rules of Procedure to make a declaration of interest when the proposed resolution was debated and voted on at a Council meeting. The legal adviser's confirmation that such declaration was not required as the proposed adjustments of financial eligibility limits of legal aid applicants were applicable to the whole population of Hong Kong, and the adjustments were aimed at maintaining the real value of the limits and Members from the legal profession did not stand to gain from their participation in the debate and voting on the resolution.</p> <p>Ms EU sought clarification on whether it was the Administration's policy that a certain percentage of households should be eligible for legal aid.</p> <p>The Administration's response that -</p> <ul style="list-style-type: none"> (a) the Administration's legal aid policy was to provide publicly-funded legal aid to those who could not afford the costs of pursuing litigation on a private basis and who had met the eligibility criteria for the grant of legal aid; and (b) the Administration did not have, as a matter of policy, a target coverage of legal aid services in terms of percentage of eligible households. The existing review mechanism to take account of inflation and changes in private litigation costs was to ensure that the real value of the limits would be maintained. <p>Dr Margaret NG recalled that in its past papers on the reviews of financial eligibility limits of legal aid applicants, the Administration had mentioned about the percentage of households covered by OLAS and SLAS after the proposed adjustments to the financial eligibility limits. The Clerk was requested to ascertain and provide such information to members.</p>	<p>Clerk to follow up (para 7 of minutes)</p>

Time Marker	Speaker(s)	Subject(s)	Action required
010715 - 011339	Mr Paul TSE Administration Chairman	<p>Mr Paul TSE's concurrence with the view that the Administration should put more efforts on devising means to obtain information from the legal profession on private litigation costs, for instance, by conducting a survey on the hourly rate currently charged by lawyers.</p> <p>The Administration's response that information on hourly rates of lawyers alone was not sufficient to throw light on changes in private litigation costs on major categories of cases covered by legal aid, as duration of proceedings and complexity of cases impacted significantly on the amount of litigation costs.</p> <p>The Chairman's view that hourly rates of lawyers might be a better reference indicator than litigation costs per case, given that there could be huge variations in the litigation costs of different cases depending on the length of proceedings and complexity of cases.</p>	
011340 - 011431	Mr IP Wai-ming	Mr IP Wai-ming's reiteration of his view that the Administration should come up with viable means to obtain information on private litigation costs.	
011432 - 011622	Dr Margaret NG Chairman Mr IP Wai-ming	<p>Dr Margaret NG's view that as the Legal Aid Services Council was tasked to advise on the policy concerning publicly-funded legal aid services, it should be requested to review the issues raised by Mr IP Wai-ming and Ms LI Fung-ying with a view to examining whether the policy should be changed to render adequate assistance to employees in obtaining legal aid in employees' compensation cases and employer insolvency cases.</p> <p>Members' agreement that the issue be referred to the AJLS Panel for follow-up and that the view of the Panel on Manpower be considered.</p>	Clerk to follow up (paras 5 and 6 of minutes)
011623 - 011822	Chairman ALA8 Mr IP Wai-ming Administration	<p>The legal adviser's confirmation that the legal and drafting aspects of the detailed provisions of the proposed resolution were in order.</p> <p>The Subcommittee's expression of support for the Administration giving fresh notice to move the proposed resolution at the Council meeting on 27 May 2009.</p> <p>Legislative timetable</p>	