

**Concerns of the Panel on Administration of Justice and Legal Services
(AJLS Panel)**

**Claims for protection under
The Convention Against Torture and Other Cruel, Inhuman or
Degrading Treatment or Punishment (CAT)**

In his speech delivered at the Ceremonial Opening of the Legal Year 2009 on 12 January 2009, the President of the Law Society of Hong Kong expressed concern over the findings of the Hon Justice Saunders in hearing six applications for judicial review concerning the screening process adopted by the Director of Immigration and the Secretary for Security in dealing with claims for protection under CAT. According to the findings of the learned Judge, claimants for protection under CAT have been denied legal representation and access to legal aid. The learned Judge has also pointed out that almost inevitably a claimant under CAT is a person without any means to pay for his own legal representation. If free legal assistance is not provided, the claimant is effectively being denied the right to that legal assistance.

2. In the relevant judgment delivered on 5 December 2008, the learned Judge has, among others, made the following declarations -

- (a) A declaration that the policy of the Director of Immigration and the Secretary for Security not to permit the presence of a legal representative of a claimant under CAT during either the completion of a questionnaire by the claimant, or during interview by the examining officers from the Immigration Department is unlawful and in breach of the duty of the Government of the Hong Kong Special Administrative Region (HKSAR) to assess claims for protection under CAT in accordance with high standards of fairness; and
- (b) A declaration that the policy of the Director of Immigration and the Secretary for Security not to provide, at their expense, legal representation to a claimant under CAT who is unable to afford that legal representation, is unlawful and in breach of the duty of the HKSAR Government in accordance with high standards of fairness.

3. Right to legal representation and access to legal aid are two issues of concern to the AJLS Panel. The Panel has agreed to convey these issues for the consideration of the Panel on Security during the forthcoming discussion of the concluding observations of the Committee Against Torture on the second periodic report of HKSAR under CAT.