



THE
LAW SOCIETY
OF HONG KONG
香港律師會

立法會 CB(2)2329/09-10(01)號文件

(只備英文本)

LC Paper No. CB(2)2329/09-10(01)

(English version only)

3/F WING ON HOUSE · 71 DES VOEUX ROAD
CENTRAL · HONG KONG DX-009100 Central 1
香港中環德輔道中71號
永安集團大廈3字樓

TELEPHONE (電話) : (852) 2846 0500
FACSIMILE (傳真) : (852) 2845 0387
E-MAIL (電子郵件) : sg@hklawsoc.org.hk
WEBSITE (網頁) : www.hklawsoc.org.hk

Our Ref :
Your Ref :
Direct Line :

Legal Aid

BY EMAIL AND BY POST

30 September 2010

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Dr. Hon. Margaret Ng,
Chairman of the LegCo AJLS Panel,
Legislative Council,
Legislative Council Building,
8 Jackson Road,
Central, Hong Kong.

Dear *Margaret*,

Five-yearly Review of the Criteria for Assessing the Financial Eligibility of Legal Aid Applicants

We refer to today's AJLS Panel meeting on the above subject and would like to submit the comments of our Legal Aid Committee on the latest Administration's proposals, as set out in their paper dated 27 September 2010, for consideration by the Panel:

1. We noted that the Administration has made 2 changes to their March proposals, namely, (1) to further increase the financial eligibility limit ("FEL") for SLAS to HK\$1.3 million instead of HK\$1 million; and (2) to reduce the age threshold for providing more favorable treatment of the disposable capital assets owned by elderly persons when calculating their disposable capital from 65 to 60.
2. However, it is noted with regret that after a further lapse of over 2 months since the last Panel meeting in July and despite repeated requests, the Administration has still failed to answer the calls by the 2 professional bodies for information on the formula and quantitative elaboration on how they have arrived at the increased FEL figures and the increased monthly household expenditure percentile. The Administration has not addressed the points we raised in our last submissions dated 20 July 2010. Nor have they dealt with issues and suggestions made by the Bar in their various submissions. The whole review process and the revised Administration's proposals appear to be arbitrary, or at least that they have adopted a "best-guess" approach.

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3. If the Administration agrees that the test for determining the appropriate levels of FEL for OLAS and SLAS should follow that of the Scott Report so that it should not cause undue financial hardship to the legal aid applicant if he had to fund the legal costs, then one must know what those legal costs are likely to be. In this regard, the following should be taken into consideration:
 - (1) the costs of the full trial should be covered and this should be based on the legal costs of the Applicant and his liability to other parties if loses the claim; and
 - (2) the legal costs will vary in different types of cases so that for example:
 - (a) the costs for the Family Law cases may be less than that for the Personal Injuries cases; and
 - (b) the costs of litigation in the District Court will be less than that in the High Court.

4. It is wrong to take an average over all cases in all courts - especially as some of these cases were settled.
 - (1) Comprehensive Social Security Assistance – this is assessed on the circumstances of the family: the more children, the more you get; and
 - (2) Pension – this is not limited to the average age that a person die. It is for life.

Solicitors, when being required to give a client an estimate of their legal costs, would not take an average of all their bills in the previous cases they handled, but would assess the costs by reference to the particular case involved.

5. The Administration's argument that to have different means tests for different types of cases is discriminatory is untenable. Indeed, there are already different FELs set for OLAS and SLAS. On the contrary, to have a "one-size-fits-all" policy is a type of reverse discrimination e.g. a High Court legal claim applicant is discriminated against vis-a-vis someone of a lower value legal claim.

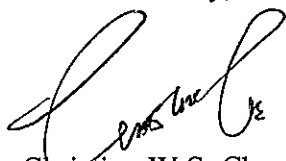
6. The inevitable result of a "one-size-fits-all" policy is that the "rich" may not pursue the claim; or they pursue it until they run out of money – and then become eligible for legal aid.



Unfortunately, the Committee has not been armed with sufficient information and data as to enable it to decide whether the Administration's present proposals are adequate. **However, to ensure the community can take early benefit of the proposed extended coverage of legal aid, the Committee suggests that the Administration should perhaps first implement the present proposals and commit to continue the discussions on the five-yearly review within the next 12 months on the outstanding issues**, including, the criteria and formula for future reviews, the possibility to have different FELs tailored for different types of cases, expansion of SLAS, etc.

Lastly, we feel the need to register our dissatisfaction on the persistent lateness of the Administration in supplying the papers for the purpose of Panel meetings as well as its failure to provide adequate information in the paper. Very often, the Administration's papers only arrived in the week of the Panel meeting, which has made it very difficult for us to arrange for thorough discussion of the subject within the profession to properly prepare for the Panel meeting. This clearly will not facilitate fruitful discussion at the Panel meeting.

Yours sincerely,



Christine W.S. Chu
Assistant Director of Practitioners Affairs