

**立法會**  
**Legislative Council**

Ref : CB2/PL/AJLS

LC Paper No. CB(2)1581/09-10  
(These minutes have been seen  
by the Administration)

**Panel on Administration of Justice and Legal Services**

**Minutes of meeting**  
**held on Monday, 29 March 2010, at 4:30 pm**  
**in Conference Room A of the Legislative Council Building**

- Members present** : Dr Hon Margaret NG (Chairman)  
Hon Albert HO Chun-yan (Deputy Chairman)  
Hon James TO Kun-sun  
Hon LAU Kong-wah, JP  
Hon Miriam LAU Kin-yee, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Dr Hon Priscilla LEUNG Mei-fun  
Hon IP Wai-ming, MH  
Hon Paul TSE Wai-chun
- Members absent** : Dr Hon Philip WONG Yu-hong, GBS  
Hon Timothy FOK Tsun-ting, GBS, JP
- Member attending** : Hon Paul CHAN Mo-po, MH, JP (For items V and VI only)
- Public Officers attending** : Items IV, V and VI  
Home Affairs Bureau  
Ms LUI Kit-yuk, Grace  
Deputy Secretary for Home Affairs (1)  
Ms CHOW Kam-yuk, Christine  
Principal Assistant Secretary for Home Affairs  
(Civic Affairs)2  
Ms MAK Tse-ling, Elaine  
Assistant Secretary for Home Affairs (Civic Affairs)(2)1

Legal Aid Department

Mr CHAN Heung-ping, William  
Director of Legal Aid

Mr KWONG Thomas Edward  
Deputy Director of Legal Aid / A&P

Item VII

Department of Justice

Miss Michelle TSANG  
Senior Assistant Solicitor General

Ms Alice CHOY  
Senior Government Counsel

**Attendance by  
invitation** :

Item IV

Legal Aid Services Council

Hon Paul M P CHAN  
Chairman

Mr Victor Y C LI  
Council Secretary

Hong Kong Bar Association

Mr Ruy Barretto, SC

Mr Nicholas Pirie

The Law Society of Hong Kong

Mr Dennis HO  
Member of the Legal Aid Committee

Mr Leslie YEUNG  
Member of the Legal Aid Committee

Society for Community Organization

Mr TSOI Yiu-cheong, Richard  
Community Organizer

Items V and VI

Hong Kong Bar Association

Mr Ruy Barretto, SC

Mr Nicholas Pirie

The Law Society of Hong Kong

Mr Stephen HUNG  
Council member and Chairman of the Criminal Law and  
Procedure Committee

Mr Dennis HO  
Member of the Legal Aid Committee

Mr Leslie YEUNG  
Member of the Legal Aid Committee

Society for Community Organization

Mr TSOI Yiu-cheong, Richard  
Community Organizer

Item VII

Hong Kong Bar Association

Mr Robin Egerton  
Council Member

The Law Society of Hong Kong

Mr Dennis HO  
Member of the Family Law Committee

**Clerk in attendance** : Miss Flora TAI  
Chief Council Secretary (2)3

**Staff in attendance** : Mr KAU Kin-wah  
Assistant Legal Adviser 6

Ms Amy YU  
Senior Council Secretary (2)3

Ms Wendy LO  
Council Secretary (2)3

Mrs Fanny TSANG  
Legislative Assistant (2)3

---

Action

**I. Confirmation of minutes of meeting**

[LC Paper No. CB(2)1096/09-10]

The minutes of the meeting held on 25 January 2010 were confirmed.

**II. Information papers issued since last meeting**

2. Members noted that the following papers had been issued since the last meeting -

- (a) Letter dated 11 February 2010 from the Secretary for Home Affairs to the President of the Law Society of Hong Kong on "Review of criminal legal aid fees" [LC Paper No. CB(2)973/09-10(01)];
- (b) Consultation Paper on Double Jeopardy published by the Law Reform Commission's Double Jeopardy Subcommittee; and
- (c) Executive Summary of the Consultation Paper on Double Jeopardy [LC Paper No. CB(2)1093/09-10(01)].

**III. Items for discussion at the next meeting**

[LC Paper Nos. CB(2)1156/09-10(01) - (03)]

3. Members agreed to discuss the following items proposed by the Judiciary Administration ("JA")/Administration at the next regular meeting to be held on 26 April 2010:

- (a) Proposed construction of the West Kowloon Law Courts Building;
- (b) Non-Civil Service appointment of a Deputy Principal Government Counsel in the Department of Justice for promotion of mediation; and
- (c) Proposal to implement a verified, searchable and authenticated electronic database of Hong Kong legislation.

Action

4. The Chairman said that concern was raised about the workload and manpower situation of bailiffs during the examination of the Estimates for Expenditure 2010-2011 at the special meeting of the Finance Committee on 24 March 2010. At the suggestion of the Chairman, members agreed to discuss the subject of bailiff services at the meeting on 26 April 2010, if JA was in a position to do so.

*(Post-meeting note: Subsequent to the meeting, JA advised that it would not be ready to discuss the subject of bailiff services at the April 2010 meeting and proposed to discuss it at the June 2010 meeting instead. With the concurrence of the Chairman, the subject of "document design of draft legislation" proposed by the Administration would also be discussed at the meeting in April 2010.)*

5. Members also agreed to discuss the Consultation Paper on Double Jeopardy (referred to in paragraph 2(b) above) at the regular Panel meeting in May 2010.

**IV. Independent statutory legal aid authority**

[LC Paper Nos. CB(2)782/09-10(05) and CB(2)1156/09-10(04) - (05)]

Briefing by the Legal Aid Services Council ("LASC")

6. Mr Paul CHAN, in his capacity as the Chairman of LASC, briefed members on the work undertaken by LASC's working party ("working party") in its recent review on independence of legal aid and how the decision was taken by LASC on the matter, as detailed in his letter dated 19 March 2010 to the Panel [LC Paper No. CB(2)1156/09-10(04)]. He advised that while the recent review had concluded that there was no pressing need for the establishment of an independent legal aid authority in Hong Kong, LASC had decided to seek funds from the Administration to seek a fresh examination of the issue in late 2011/early 2012.

7. Members noted the updated background brief prepared by the Legislative Council ("LegCo") Secretariat on the subject under discussion [LC Paper No. CB(2)1156/09-10(05)].

Views of deputations

*The Hong Kong Bar Association ("Bar Association")*

8. Mr Ruy Barretto expressed dissatisfaction with LASC's refusal to provide the Panel with a copy of the report on its recent review on the independence issue, notwithstanding the Panel's request made at the meeting on 25 January 2010. He did not subscribe to the explanation given by LASC that the report could not be provided to the Panel as there was an agreement between LASC and staff of the Legal Aid Department ("LAD") that their views would be treated in strict confidence. He pointed out that as a statutory body, LASC had the duty to be transparent. It was also his understanding that LASC had always been transparent in its operation and that it had been the practice of LASC to provide its consultation reports to the Bar

Action

Association and other parties. In his view, to address the privacy concern, the names of LAD staff in the report could be obliterated. He reiterated his request that the review report should be provided to LegCo.

*The Law Society of Hong Kong ("Law Society")*

9. Mr Leslie YEUNG shared the view of the Bar Association that LASC should provide the review report to LegCo. He considered that LASC had taken a wrong approach in consulting only the staff of LAD in its recent review. It was important that public views should also be taken into account in the review process. He stressed that LASC should embark on a fresh review immediately, instead of deferring it for another two years, bearing in mind that the independence issue had been discussed for decades. The Law Society maintained its view that an independent legal aid authority should be set up. He sought information on the cost of engaging a consultant to conduct a fresh review on the independence issue.

*Society for Community Organization ("SOCO")*

10. Mr TSOI Yiu-cheong said that SOCO supported in principle the establishment of an independent legal aid authority. He shared the view of the two legal professional bodies that LASC should make public the review report. He also agreed to the view that LASC should consult not only LAD staff but also the public, in particular users of legal aid service, on the need for the establishment of an independent legal aid authority in Hong Kong. Apart from the independence issue, he considered that LASC should also conduct a thorough review on the operation of LAD under the existing institutional setup with a view to enhancing its operational independence.

Response of LASC to deputations' views

11. Mr Paul CHAN said that he accepted the criticisms made by the Bar Association on LASC's handling of the review report. He further said that the Panel's request for a copy of the report had been deliberated at length by LASC. He explained that when the staff associations and the directorate officers of LAD were consulted, there was the agreement that their views submitted were for internal reference by LASC only and would be treated in strict confidence to foster frank exchange of views between the parties. LASC considered it important to honour its confidentiality agreement so that in future study or consultation on this and other matters, LASC would have the trust and confidence of those approached to give their views.

12. On the concern raised by some deputations that only LAD staff had been consulted in the review process, Mr Paul CHAN said that in the course of its work, the working party had considered the need to consult the public on the matter. The working party noted that when a consultant was engaged to advise LASC on the feasibility and desirability of establishing an independent legal aid authority in 1998 ("the 1998 review"), views of the public and community groups had been sought.

Action

Findings of these surveys revealed that the majority of those consulted did not perceive independence as a major issue. Apart from making reference to the 1998 surveys, the working group also noted from LASC's ongoing monitoring of the work of LAD and from feedbacks from aided persons who responded to regular customer service surveys conducted by LAD that there had been no cogent evidence to suggest that the public at large was too concerned about independence. The checks and balances that were currently in place had ensured that legal aid was administered justly, which also led the working party to believe that the legal aid system was operating independently. Having regard to these considerations, the working party did not consider that a fresh survey was needed.

13. In response to Mr Leslie YEUNG's enquiry on the cost of commissioning a consultancy on the independence issue, Mr Paul CHAN advised that the consultancy study commissioned by LASC in 1998 cost over \$4 million.

Discussion

14. The Chairman deplored that LASC had departed from its open and transparent approach in its handling of the review report. She was also concerned that only LAD staff had been consulted in the review process. She considered that the review was not comprehensive and not of much reference value.

15. Mr James TO opined that LASC should ascertain whether there had been any changes in the public's views on the independence issue since the 1998 review. He queried why the working party had consulted only LAD staff, but not the other parties consulted in the 1998 review. Noting that the views of LAD staff on the independence issue had been summarized in paragraph 8 of the letter from the Chairman of LASC, he doubted whether the confidentiality agreement with LAD staff was the real reason for LASC's refusal to disclose the review report and expressed concern whether there were other findings in the report which LASC considered not appropriate to disclose. He urged the Chairman of LASC to further explore the feasibility of providing the review report to the Panel, for instance, by obliterating the names of the LAD staff concerned. Noting the working party's view that any proposal to disestablish LAD, thereby incurring additional expenses of some \$460 million, would unlikely meet serious consideration by the Administration, Mr TO considered it odd that the working party had come to such a conclusion without discussing its financial concern with the Administration.

16. Ms Emily LAU considered that the estimated cost of \$460 million required for disestablishing LAD and setting up a new independent legal aid body was not a substantial sum compared with other Government expenses and having regard to the importance of legal aid services. Mr Paul TSE echoed a similar view. The Chairman opined that as the statutory function of LASC was to advise the Government on legal aid policy, resources implications should not be its major concern in considering the independence issue.

Action

17. Ms Emily LAU found LASC's way of handling the recent review rather strange. In her view, if LASC had intended to make public the findings of its review, it should not have made agreement with LAD staff that their views submitted were for internal reference by LASC only. She also considered it odd for LASC to consult only LAD staff in its recent review. She expressed concern that the findings in LASC's recent review had departed significantly from its recommendation in the 1998 review and sought explanation for such a departure. Ms LAU further said that the independence issue was not merely a perception problem but a real issue. She stressed that the quality of services of LAD and the independence of legal aid services were separate matters. She expressed support for the view that LASC should engage a consultant to conduct a fresh review on the independence issue.

18. The Deputy Chairman shared the view that LASC should consider whether it was feasible to make public the report after obliterating the names of LAD staff concerned. Referring to the last paragraph of LASC Chairman's letter to the Chief Executive dated 16 October 2009 on the findings of its recent review (Appendix II to the background brief), he pointed out that LASC had acknowledged that it would be ideal for a separate entity to administer legal aid independent of the government to deal with the perception problem. It was, however, further stated in the letter that in view of the very satisfactory service currently provided by LAD, the views of LAD staff on the matter, and the present financial position of the government, LASC did not see any pressing need to disestablish LAD and substitute it by an independent legal aid authority. He did not consider the reasoning given by LASC convincing. He stressed that it was essential to the administration of justice that legal aid services must not only be delivered independently but also seen to be so. If there was a perception problem, it could not be said that the existing legal aid service was very satisfactory. As to the objection voiced by LAD staff, he pointed out that LAD staff was only one of the stakeholders on the independence issue. There were voices from many quarters of the community supporting the independence of legal aid. A motion urging the establishment of an independent legal aid authority had also been passed by the former LegCo. Such views should also be taken into account by LASC. He shared the view that the estimated \$460 million required for the disestablishment of LAD should not be a financial concern for the Administration, given the importance of the independence of legal aid and the one-off nature of the funding. The Deputy Chairman reiterated that the argument given by LASC was not convincing and stressed that the Administration should not consider the independence issue solely on the basis of the recent review of LASC. He considered that the Administration should have explained whether it had accepted the LASC's recommendation simply on the argument put forward by LASC.

19. Mr LAU Kong-wah did not see strong public demand or urgent need for the establishment of an independent legal aid authority. To his knowledge, the public were generally satisfied with the services provided by LAD. He was not aware of cases suggesting that independence of legal aid had been compromised as a result of the transfer of legal aid portfolio to the Home Affairs Bureau in 2007. In his view, there was no apparent deficiency in the provision of legal aid service under current

Action

system to justify independence. Referring to paragraph 18 of the background brief prepared by the LegCo Secretariat on the subject, he pointed out when Dr Priscilla LEUNG moved a motion on "Relaxing the eligibility criteria for legal aid" for debate at the Council meeting of 11 February 2009, the motion to amend moved by Mr Albert HO proposing the establishment of an independent legal aid body had been negatived, which showed that Members held different views on the issue. He stressed that Members should adopt a cautious approach in handling the matter which involved a structural reform of the present system. While noting that there was no urgent public demand for the independence of legal aid, he agreed that the issue should be kept under review. Should a fresh review be conducted on the independence issue in future, he considered it important to gauge the views of users on the quality and independence of legal aid services. While appreciating the need for LASC to honour its confidentiality agreement with LAD staff, he considered it more desirable if the review report could be provided for members' reference. To facilitate the disclosure of the report, LASC could consider obliterating the names of LAD staff from their submissions or providing a summary of the views expressed in their submissions.

20. The Chairman agreed on the importance of gauging the views of users of legal aid services on the independence issue. She stressed that the views of those who had been refused legal aid should also be collected. The Deputy Chairman echoed the view.

21. Mr Paul TSE shared the view of the Bar Association that LASC should further explore the viability of providing the review report to the Panel. He pointed out that in conducting the review, the working party should have been mindful of the need to make public its review report and should not have made agreement with LAD staff that their views would be for internal reference by LASC only. The working party should have also consulted other stakeholders apart from LAD staff. In his view, the handling of the recent review by the working party reflected that there was deficiency in LASC's monitoring of the review process. He stressed that it was not a question of the quality of legal aid service provided by LAD. In face of the increasing number of judicial reviews brought against the Government in recent years, he considered it important for legal aid services to be provided by a body independent of the Government to ensure fair administration of justice. While noting that LAD would seek independent legal advice in respect of legal aid applications which sought to challenge Government decisions, he was concerned about the independence of such a mechanism. He pointed out that as some counsel had clear political stance on certain matters, the choice of counsel by LAD could have a significant bearing on the outcome of the legal aid applications concerned. Mr Paul CHAN responded that there were safeguards under the current mechanism to ensure that legal aid service was administered independently. An applicant had the right to appeal to the Registrar of High Court or a judge against the refusal of legal aid by LAD on merits ground.

Action

22. Dr Priscilla LEUNG considered that the independence of legal aid was not a priority issue for improving the legal aid system in Hong Kong. In her view, it was more important to improve access to legal aid service by raising the financial eligibility limits and expanding the scope of cases covered by legal aid, and enhancing the transparency in the assessment of legal aid applications. She was also aware of concern raised by some legal professionals that many legal aid cases had been assigned to a certain group of solicitors and barristers. Mr Paul CHAN explained that as an aided person could nominate a lawyer of his/her own choice to represent him/her, there might be chances that many legal aid cases were taken up by the same group of lawyers. LASC was concerned about the issue and its interest group had looked into it. Director of Legal Aid ("DLA") supplemented that as it was important for aided persons to have confidence in their legal representatives, LAD would normally respect their choices of legal representatives. In cases where the aided persons had not nominated any lawyers to represent them, LAD would assign the cases in accordance with the established criteria. He added that LAD had had regular discussions with LASC on the assignment of legal aid cases with a view to ensuring that cases were more evenly assigned among legal aid panel lawyers.

Response of LASC and the Administration to issues raised by members

23. Mr Paul CHAN made the following points in response to issues raised by members on the recent review conducted by LASC -

- (a) LASC supported in principle the independent administration of legal aid services. LASC also acknowledged that the perception of independence of legal aid was an important issue, but did not see a pressing need to pursue the issue at the time when the review findings were deliberated. Nevertheless, as stated in his letter to the Chief Executive dated 16 October 2009, LASC acknowledged that stakeholders' perception on independence needed to be further examined and would seek a fresh examination of the independence issue in late 2011/early 2012. In this regard, LASC had planned to seek funds from the Administration to engage consultants to assist in the study;
- (b) he accepted the criticisms made by Members and deputations on the handling of the review report. However, in view of the confidentiality agreement with LAD staff, LASC was not in a position to make public the review report. LASC had also deliberated whether the report could be made public after obliterating the names of LAD staff concerned, and had come to the view that it was not appropriate to do so. To facilitate the Panel's discussions, the gist of the report and the thinking of the working party had been set out in detail in his letter to the Panel Chairman dated 19 March 2010. In handling reports of future studies, LASC would take into consideration the experience gained from the recent review and members' comments; and

Action

- (c) LASC had not discussed with the Administration the resources implications of establishing an independence legal aid authority. On the basis of the 1998 review, the working party estimated that some \$460 million would be required for disestablishing LAD and replacing it by an independent legal aid authority. When the working party arrived at its conclusions in November 2008, it had taken into account the financial position of the Government at that time when the adverse effects of the financial tsunami were being felt, and came to the view that any proposal to disestablish LAD to address a perception problem, thereby incurring additional expenses in staff compensations and in setting up a new organization to continue the same kind of work, would unlikely meet serious consideration by the Administration.

24. Deputy Secretary for Home Affairs ("DSHA") responded that the Administration attached great importance to the findings and recommendations in the review undertaken by LASC, which had the statutory duty to advise the Chief Executive on the feasibility and desirability of the establishment of an independent legal aid authority. The Administration agreed fully with LASC's view that while the institutional arrangement of LAD being a Government department might create a perception of a lack of independence, there was no evidence to suggest that the independence of legal aid administration had been compromised under the existing arrangement. She pointed out that judicial reviews had been on the rise in recent years (from 12 cases in 2002-2003 to 211 cases in 2008-2009) and the funding of numerous applications for legal aid in judicial review cases against the Government bore evidence to the fact that legal aid was administered independently in Hong Kong. Examples of litigation cases against the Government which were funded by legal aid included the judicial reviews involving the right of abode issue, discrimination against male homosexuals and the environmental assessment report on the Hong Kong-Zhuhai-Macao Bridge.

Way forward

25. The Chairman invited members' views on the way forward. Ms Emily LAU considered that LASC should explore the feasibility of advancing the schedule for conducting a fresh review of the independence issue. The Deputy Chairman and Mr LAU Kong-wah concurred with the view. Mr Paul TSE, however, queried the need for spending public resources to conduct a fresh examination on the issue, considering that LASC had already acknowledged that an independent legal aid authority should ideally be established.

26. Concluding the discussions, the Chairman said that members generally agreed that LASC should advance the schedule for conducting a fresh review on the independence issue. Members were also of the view that the review should be conducted comprehensively, and views of all relevant stakeholders, including users of legal aid services and persons whose legal aid applications had been refused, should be gauged in the process. She further said that as in the case of the 1998 review, the study should cover not only the issue of whether legal aid services should be delivered

Action

LASC by an entity independent of the Government, but also the implementation details, such as the statutory functions of the independent legal aid authority to be set up and the transitional arrangements. She requested the Chairman of LASC to consider members' requests and views and revert to the Panel in writing on its consideration in due course and copy its reply to the two legal professional bodies. Mr Paul CHAN undertook to relay members' views to LASC for consideration. He reiterated that LASC would seek funds from the Administration to engage an independent consultant to conduct a fresh review of the independence issue, which would also cover the implementation plan for establishing an independent legal aid authority, if it was so recommended in the review.

**V. Five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants**

[LC Paper Nos. CB(2)1148/09-10(01) and CB(2)1156/09-10(06)]

**VI. Free legal advice service**

[LC Paper Nos. CB(2)1148/09-10(02) and CB(2)1156/09-10(07)]

27. The Chairman proposed that agenda items V and VI be discussed jointly as both items were related to legal aid. Members agreed.

28. Members noted the respective background briefs prepared by the LegCo Secretariat on five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants ("five-yearly review") and provision of free legal advice service [LC Paper Nos. CB(2)1156/09-10(06) and (07)].

Briefing by the Administration

*Five-yearly review*

29. DSHA briefed members on the Administration's recommendations arising from the recently completed five-yearly review, as detailed in the Administration's paper [LC Paper No. CB(2)1148/09-10(01)]. In gist, the Administration recommended that the following proposals be implemented -

- (a) the financial eligibility limit for the Ordinary Legal Aid Scheme ("OLAS") be raised from the \$175,800 by about 50% to \$260,000 and that for the Supplementary Legal Aid Scheme ("SLAS") from \$488,400 by about 100% to \$1 million;
- (b) the personal allowance, which was a deductible component in calculating disposable income, be set at a higher level equivalent to the median monthly household expenditure in lieu of the present 35-percentile household expenditure. For example, an applicant from a four-person household would have his personal allowance raised from \$11,120 to \$13,710 per month (an increase of about 23%); and

Action

- (c) an amount equivalent to the financial eligibility limit of OLAS be disregarded from the savings of the elderly legal aid applicants who had reached the age of 65 at the time of applications when calculating their disposable capital.

*Provision of free legal advice service*

30. DSHA then went on to brief members on the Administration's proposals for improving the provision of free legal advice service as set out in the Administration's paper [LC Paper No. CB(2)1148/09-10(02)]. She advised that it was the Administration's plan to enhance the support services for volunteer lawyers under the Free Legal Advice Scheme ("FLAS") by providing additional resources of about \$3 million for engaging a dedicated team of 15 staff in the District Offices for appointment making and recording of case details for persons seeking advice. In addition, the Administration was exploring the possibility of providing funding for an agency to strengthen the provision of free legal information to the community through the internet. At the same time, it was examining options for addressing the demand for more extensive free legal advice service, such as the setting up of a free legal advice hotline, and expansion of the scope of free legal advice from a preliminary one of general nature to more case specific advice. As regards the proposal for the provision of publicly-funded legal advice to detainees in police stations, she advised that the Administration needed more time to examine carefully the proposal, given its significant policy and financial implications.

Views of deputations

*The Bar Association*

31. Mr Ruy Barretto referred members to the Bar Association's submission dated 24 September 2009 [LC Paper No. CB(2)357/09-10(01)] submitted for the Panel meeting on 25 January 2010 for details of its views on various issues relating to the present discussion. He stressed that consistent with past practice, LASC's response to the Administration's proposals on the current five-yearly review should be made public to facilitate more informed discussions. He also requested the Administration to explain the basis for setting the proposed financial eligibility limits for OLAS and SLAS at \$260,000 and \$1 million respectively. He expressed disagreement with the across-the-board approach adopted by the Administration in setting financial eligibility limits which he believed would result in injustice in many individual cases.

*The Law Society*

32. Mr Leslie YEUNG said that the Law Society supported in principle the raising of the financial eligibility limits of the two legal aid schemes. However, it also shared the Bar Association's view that the Administration should explain the basis for setting the financial eligibility limits for OLAS and SLAS. He added that there was a need to enhance the provision of free legal advice service, including the provision of such service to detainees in police stations.

Action

33. Mr Dennis HO said that the Law Society did not subscribe to the explanation given by the Administration in its paper for not expanding the scope of SLAS to cover other types of cases such as family, commercial and probate cases. One of the primary reasons cited by the Administration was that most of these cases were not covered by insurance, thus bringing a very low prospect of recovery of damages. In his view, such reasoning ran counter to the Government's policy objective on legal aid which was to ensure that no one with reasonable grounds for taking legal action was prevented from doing so due to a lack of means. He pointed out that SLAS had been highly commended by the Court and overseas jurisdictions such as the United Kingdom and urged the Administration to consider seriously expanding the scope of cases covered by SLAS.

*SOCO*

34. While supporting in principle the Administration's proposals of relaxing the financial eligibility limits of the two legal aid schemes and raising the level of personal allowance in calculating disposable income, Mr TSOI Yiu-cheong shared the view of the two legal professional bodies on the need for the Administration to explain the basis for arriving at the proposed financial eligibility limits. In his view, the Administration should also provide an explanation on why it had not adopted LASC's proposal for raising the financial eligibility limit for SLAS to \$1.3 million as well as information on changes in private litigation costs to assist the Panel to assess the adequacy of the proposed increase in financial eligibility limits. He considered it regrettable that the Administration had failed to respond to the calls for expanding the scope of legal aid, such as provision of legal aid to Hong Kong residents involved in litigations on the Mainland, in its proposals for the current five-yearly review.

35. Mr TSOI further said that the existing provision of free legal advice service was far from adequate. He considered that the scope of free legal advice service should be expanded to include case specific and follow-up advice. Free legal advice service should also be provided to persons detained by the police or other disciplinary forces. The Administration should provide funding to non-governmental organizations ("NGOs") for the provision of community legal advice service. He requested the Administration to provide a timetable for reverting to the Panel on its consideration of measures to strengthen the provision of free legal advice service.

Discussion

*Financial eligibility limits*

36. While welcoming in principle the Administration's proposals of relaxing the financial eligibility limits for the two legal aid schemes, Dr Priscilla LEUNG considered the extent of the proposed increase inadequate. She pointed out that Members had proposed raising the financial eligibility limit of OLAS to somewhere between \$500,000 and \$1 million, and that for SLAS to \$1 million to \$3 million. She urged the Administration to consider further relaxing the financial eligibility

Action

limits, in particular for OLAS. She believed that most Hong Kong people, in particular the middle class, would still be ineligible for legal aid under OLAS after the proposed adjustment.

37. Ms Miriam LAU also welcomed the Administration's proposals of relaxing the financial eligibility limits for the two legal aid schemes. She, however, shared the view that the proposed levels of increase were inadequate. She stressed that many middle class people could not afford the high litigation costs and urged the Administration to respond positively to LASC's proposal for raising the financial eligibility limit for SLAS to \$1.3 million. Ms LAU considered that the Administration should explain why it proposed to raise the limit to \$1 million, instead of \$1.3 million.

38. The Deputy Chairman echoed the view that the proposed increase of the financial eligibility limit for OLAS to \$260,000 was inadequate to meet the needs for legal aid services. He concurred with the two legal professional bodies that the Administration should explain how the proposed financial eligibility limits were arrived at.

39. Ms Emily LAU also agreed that the Administration should provide detailed explanation on the basis for setting its proposed financial eligibility limits with a view to assisting the Panel and the public in assessing adequacy of the proposed levels of increase in safeguarding the right to access to justice. She shared the view that LASC's response to the Administration's proposals arising from the current five-yearly review should be made public. She considered it necessary for the Panel to receive views from the public and relevant organizations on the Administration's proposals arising from the current five-yearly review.

40. The Chairman said that the appropriateness of having a one-line financial eligibility limit for all types of cases had long been questioned by members. The Administration, however, had not recommended any changes in this regard.

*Scope of SLAS*

41. Dr Priscilla LEUNG opined that the present scope of cases covered by SLAS was too narrow. In her view, its scope should be expanded to cover monetary claims arising from systemic financial disputes, such as those relating to the Lehman Brother minibonds.

42. Ms Miriam LAU said that merely raising the financial eligibility limit for SLAS was inadequate in improving the middle class' access to justice. She stressed that the Administration should also consider seriously expanding the scope of SLAS.

43. Mr Paul TSE expressed support for widening the types of cases under SLAS to cover appeals relating to judgments delivered by various Tribunals.

*Scope of legal aid*

44. Dr Priscilla LEUNG urged the Administration to reconsider the proposal of expanding legal aid service to cover litigation cases on the Mainland involving Hong Kong people, in particular for those against whom criminal charges had been laid. She stressed that Hong Kong people involved in litigations on the Mainland should at least be provided with legal advice service under legal aid. Ms Emily LAU shared the view that the Administration should consider actively the proposal.

45. Mr Paul TSE expressed reservation about the proposal of extending the coverage of legal aid to litigation cases on the Mainland involving Hong Kong people, pointing out that legal aid services normally covered only legal proceedings within the relevant jurisdiction. He envisaged that a number of problems would need to be resolved if legal aid was to be extended to legal proceedings outside Hong Kong, such as the level of the service fees for engaging lawyers to undertake litigation work outside Hong Kong, the monitoring of their work, and the criteria for determining the jurisdictions to which legal aid services should be extended.

46. The Chairman said that she appreciated that extending the scope of legal aid services to the Mainland might give rise to many problems in actual practice. Nevertheless, with the increasing number of Hong Kong people working and living on the Mainland, consideration should be given to providing legal advice service to Hong Kong people involved in litigations on the Mainland and enhancing the dissemination of basic information on Mainland laws in the community.

47. The Deputy Chairman reiterated his long-standing concern about the types of cases currently excluded from the scope of legal aid. Referring to paragraph 36 of the background brief prepared by the LegCo Secretariat on the five-yearly review [LC Paper No. CB(2)1156/09-10(06)], he considered the reasoning given by the Administration for excluding defamation cases from legal aid unacceptable. The Administration had advised that such cases were excluded in view of the inherent difficulties in assessing the merits of this type of cases and quantifying in monetary terms the damages for loss of reputation. The Deputy Chairman, however, expressed disagreement with the Administration's reasoning, pointing out that relevant case law could assist LAD in assessing the merits of and damages for such cases. He also did not subscribe to the Administration's view that it would not be a reasonable use of limited public funds to grant legal aid for disputes arising from investment in high-risk financial products. He pointed out that many disputes in derivative products involved misselling, misrepresentation or even fraud. It was unfair that consumer investors who had been misled into purchasing such products did not have access to legal aid to seek redress through the Court. He strongly urged the Administration to further consider extending the scope of legal aid to cover disputes in financial derivative products.

Action

*Provision of free legal advice service*

48. Dr Priscilla LEUNG agreed with the direction of exploring opportunities for expanding free legal advice service proposed by the Administration and urged the Administration to expand the scope of free legal advice service along those lines.

49. Ms Emily LAU said that the provision of free legal advice service at the community level was grossly inadequate and urged the Administration to allocate more resources to meet the public need for such services.

50. Mr Paul TSE said that given the limited public resources on legal aid services, the Administration should consider enhancing the delivery of free basic legal information and principles to the community through the internet as well as radio and television broadcasting.

51. The Chairman said that while the Administration had taken a step forward in enhancing the support services for volunteer lawyers under FLAS, there was still much room for improvement in the provision of free legal advice service. The Administration should conduct a comprehensive review on the need to extend the scope of services under FLAS and allocate more resources to improve this area of work. She pointed out that persons seeking assistance under FLAS were facing genuine legal problems and it was not adequate to provide them only with one-off advice of a general nature. In conducting the review on FLAS, the Administration should solicit the views of volunteer lawyers working under the Scheme, relevant NGOs and users of the service on possible areas of improvements.

52. Mr Stephen HUNG of the Law Society stressed that in considering the expansion of free legal advice service, the Administration should not continue to rely on the legal profession providing such service on a pro bono basis. While expressing support for the Administration's proposal of improving the support services for FLAS, he considered that the existing number of volunteer lawyers working under the Scheme was inadequate to meet the service demand and suggested that consideration be given to granting an honorarium to volunteer lawyers for their free legal advice service with a view to attracting more lawyers to join FLAS. Mr Ruy Barretto indicated support for Mr HUNG's views, pointing out that Hong Kong was the only place in the world where such large scale free legal advice service was being provided by the legal profession on a pro bono basis. He added that the provision of legal advice through a hotline was not adequate and it was necessary for the Administration to extend legal aid to cover legal representation in the Tribunals to ensure equality in access to justice.

Administration's response

*Adjustment of financial eligibility limits*

53. DSHA explained that there was no set formula for determining the financial eligibility limits for legal aid. The proposed extent of increase was arrived at after taking into account a host of relevant factors including the costs of litigation. While

Action

full data on private litigation costs was not available, the Administration had made reference to the litigation costs for legally aided civil cases provided by LAD.

*Scope of SLAS*

54. DSHA said that the Administration was aware of the requests for expanding the scope of SLAS and had critically examined the case for such expansion. She stressed that any proposal for extending the scope of SLAS must not undermine or jeopardize its financial viability, given its self-financing nature. SLAS was by design aimed at cases which involved monetary claims of a reasonable size, with a high success rate and a reasonably good chance of recovering damages. She advised that if the scope of SLAS was to be extended to cover cases which did not fulfill such criteria, the Administration would not be able to raise the financial eligibility limit of SLAS to \$1 million at the same time. Instead, it might be necessary to set different financial eligibility limits for different types of cases under SLAS. The Administration did not consider such an approach desirable and considered it more preferable to have an across-the-board financial eligibility which was clear and simple to understand and administer. Having considered and balanced the pros and cons of various proposals for the expansion of SLAS, the Administration recommended raising its financial eligibility limit to \$1 million but not the expansion of its scope to cover other categories of cases.

*Provision of free legal advice service*

55. DSHA said that the Administration had all along made clear its position that it would not extend legal aid services to cover litigations on the Mainland. The Administration was not aware of any jurisdiction which had extended legal aid services to litigation matters of nationals outside their territories. Nevertheless, the Administration would consider the proposal raised by some Members for providing legal information and advice to Hong Kong people on Mainland legal issues. DSHA further said that she noted the views expressed by deputations at this meeting on granting an honorarium to volunteer lawyers under FLAS and providing publicly funded legal advice to persons detained in police stations as well as other places of detention, and such views would be taken into account in exploring opportunities for expanding free legal advice service. She undertook to revert to the Panel on its recommendations for expanding free legal advice service before the start of the next financial year.

HAB

Way forward

56. The Chairman suggested that a special meeting be held in May/June 2010 to receive views from relevant organizations on the Administration's proposals arising from the recently completed five-yearly review. Members agreed. To facilitate relevant organizations to give their views, the Administration was requested to explain in writing the basis for arriving at the proposed financial eligibility limits for the two legal aid schemes and provide a copy of LASC's response to the Administration's proposals in relation to the current five-yearly review.

Clerk

HAB

Action

(*Post-meeting note*: Subsequent to the meeting, the Administration had provided a copy of the letter from the Chairman of LASC setting out the Council's views on the Administration's proposals arising from the five-yearly review, a copy of which was issued to members on 31 March 2010 [LC Paper No. CB(2)1200/09-10(01)].

**VII. Matrimonial Proceedings and Property (Amendment) Bill**

[LC Paper Nos. CB(2)1148/09-10(03) and CB(2)1156/09-10(08) - (09)]

Briefing by the Administration

57. Senior Assistant Solicitor General ("SASG") introduced the Administration's paper [LC Paper No. CB(2)1148/09-10(03)] on the proposed amendments to the Matrimonial Proceedings and Property Ordinance (Cap. 192) (the Ordinance), which sought to enable parties who had obtained a divorce decree in a jurisdiction outside Hong Kong to apply for financial relief to the Hong Kong courts. The proposed amendments, which were modeled on Part III of the Matrimonial and Family Proceeding Act 1984 of the United Kingdom ("UK Act"), provided for -

- (a) the requirement that leave from the court must be obtained prior to a party making an application for financial relief under the amended provisions;
- (b) the jurisdictional requirements to be met by a party who wished to apply for an order of financial relief;
- (c) the matters to be taken into account by the court in deciding whether it was appropriate for such an order to be made in Hong Kong;
- (d) the types of order that may be made by the court if an application was granted; and
- (e) the inclusion of anti-avoidance provisions with regard to transactions intending to defeat applications for financial relief under the amended provisions.

58. SASG added that the amendment bill would also cover amendments to the relevant rules of court to facilitate applications for ancillary relief under the amended provisions of the Ordinance.

Views of the two legal professional bodies

*Bar Association*

59. Mr Robin Egerton said that the Bar Association supported in principle the proposed legislative amendments and planned to submit its views on the draft

Action

amendment bill to the Administration the following week. He highlighted the following two issues in relation to the proposed legislative amendments: (a) whether an application for ancillary relief under the amended provisions should be made to the Family Court which was within the jurisdiction of the District Court, or the Court of First Instance which had jurisdiction over wardship proceedings and Hague Convention proceedings; and (b) whether the jurisdictional requirements should be based on habitual residence or substantial connection with Hong Kong, the latter being the third limb under section 3 of the Matrimonial Causes Ordinance (Cap. 179) giving the Hong Kong courts jurisdiction to deal with divorce proceedings.

*Law Society*

60. Referring to the submission made by the Law Society [LC Paper No. CB(2)1156/09-10(09)], Mr Dennis HO pointed out that under section 15(1) of the UK Act, the court had jurisdiction to deal with an application for financial relief if one of the three jurisdictional requirements set out therein was satisfied. However, in its proposed amendments, the Administration had adopted only the first two limbs set out under section 15(1)(a) and (b) of the UK Act, *viz.* either of the parties was a permanent resident of Hong Kong or had habitual residence in Hong Kong, but not the third limb provided under section 15(1)(c) relating to possession of a beneficial interest in a matrimonial home by either party. The Administration had explained to the Law Society that it had decided to exclude the third limb having regard to the complexity of the provisions of the UK Act relating to former matrimonial home and the factual difficulties that could arise in establishing jurisdiction solely on that ground. The Law Society, however, did not subscribe to such rationale and was of the view that the Administration should incorporate the third limb provided under the UK Act into the amendment bill.

Discussion

61. Mr Paul TSE expressed support for the proposed legislative amendments to plug the loopholes in the existing Ordinance as highlighted in the judgment of *ML v YJ* (HCMC 13/2006). He agreed with the Law Society that the jurisdictional requirement set out in section 15(1)(c) of the UK Act should be included into the amendment bill.

62. Mr James TO shared the view that there was a deficiency under the existing Ordinance that parties were barred from making an application for financial relief to the Hong Kong courts in cases where the marriage had already been dissolved by the court of another jurisdiction. He also indicated support in principle for the proposed legislative amendments to address such deficiency.

63. The Chairman considered that the Administration's paper had failed to inform members of the details of the proposed legislative amendments. Without such information, the Administration's consultation with the Panel on the legislative proposal could hardly be fruitful.

Action

64. While welcoming the legislative proposal, Ms Miriam LAU echoed the view that the Administration should have provided details of the proposed amendments in its paper. She considered that it would be a better arrangement if the Administration could brief the Panel on the legislative proposals after it had completed its consultation with the two legal professional bodies.

65. SASG said that the Department of Justice (DoJ) had prepared a working draft of the amendment bill for discussion with the relevant parties including the two legal professional bodies, the Judiciary and relevant policy bureaux in January 2010. While some had responded indicating support, DoJ was still awaiting comments from others. Mr Dennis HO pointed out that the Law Society had already submitted its comments to DoJ, indicating general support for the proposed legislative amendments save for its views relating to section 15(1)(c) of the UK Act.

DoJ 66. Noting that the amendment bill would be introduced into LegCo in June 2010, the Chairman requested the Administration to provide the Panel with a supplementary information paper on details of the legislative proposal (including the issues referred to in paragraph 57 (b) to (e) above), the relevant provisions of the UK Act and how far they had been incorporated into the proposed amendments, the views of the two professional bodies and other consultees and the Administration's response thereto, before June 2010. SASG agreed.

**VIII. Any other business**

67. There being no other business, the meeting ended at 6:45 pm.

Council Business Division 2  
Legislative Council Secretariat  
20 May 2010