



1. The following remarks of the Joint Profession are for the purpose of providing the members of the Panel with an update on developments since the previous meeting.

Developments since 29 September 2009

2. More than 6,000 CAT claims are outstanding, and the number of such claims increases at about 300 per month. The pilot scheme proposed by the HKG is expected to handle at most 400 cases in a year.
3. The 2004 judgment of the CFA in *Prabakar* required the CAT screening to comply with “high standards of fairness”. That, 5 years later, we are still at square one, is due solely to the failure of the Administration to meet those standards. The Court of First Instance in *FB* found that the administrative screening system was systemically unfair and required wholesale revision. Now, a year later, we are still far from meeting the *Prabakar* standard. Delay was compounded by the Administration choosing not to discuss the new system with the Joint Profession until the middle of this year.
4. Even now, serious and fundamental problems stand in the way, including:
 - **Guidelines.** The Guidelines for the handling of the claims have not been finalized. Unless the final Guidelines are promulgated immediately, the effectiveness of the training program for lawyers scheduled to start on 14 December will be compromised. **Many of the comments made by the Joint Profession on the new system have not been taken on board or have simply been ignored.** The Panel should not accept representations that the Pilot Scheme will be in a position to assign CAT cases from 18 December 2009.
 - **Fees.** The success of the Pilot Scheme depends on a sufficient number of experienced and trained lawyers willing to do the work. We have maintained that the current rates will not attract suitable lawyers and this has clearly been shown by two surveys conducted by the Law Society and the Bar in October 2009. Only a small proportion of the respondents to the survey were prepared to accept DLS rates, far less than is needed.¹

¹ In response to a Law Society survey, only 16 out of the 286 respondents said that they would be willing to undertake the work at the current rate of \$670 per hour. A much higher proportion said that civil legal aid rates were appropriate. The Bar Association survey only produced 19 respondents in total.

- **RSD.** There has been no change to the position of the HKG that it will not conduct RSD in conjunction with CAT screening. This will inevitably lead to abuse, more delay and a waste of resources. This suggests a lack of determination on the part of the Administration to address the claims of asylum seekers and CAT claimants, many of whom are entitled to protection. With such claims likely to take years to assess, genuine and unjustifiable hardship will be imposed on claimants, who cannot work and who cannot claim welfare benefits.

Appendix

Joint Press statement by the Law Society of Hong Kong and the Hong Kong Bar Association dated 25 November 2009

**The Law Society of Hong Kong
The Hong Kong Bar Association
26 November 2009**



新聞稿
(即時發佈)

2009年11月25日

聯合聲明-酷刑聲請審核

香港律師會與香港大律師公會成立一聯合作小組，共同就法律專業對政府處理酷刑聲請的行政計劃作出回應。工作小組知悉《明報》2009年11月24日的報道〈400 律師有意參與·難民甄別料 4 月內完成〉中，引述「政府消息」，指政府與法律專業達成共識後，初步相信有 400 多名律師有興趣參與酷刑聲請的個案。工作小組重申：

1. 縱使工作小組有意與政府就行政計劃達成一份可以提供合適酬金的協議，以反映處理人命攸關的酷刑聲請的難度和重要性，但所謂與政府就行政計劃達成的「共識」並不存在。
2. 報道指「約 400 名律師」有興趣以時薪 670 元參與酷刑聲請個案，亦不正確。要得知有多少律師願意參與酷刑聲請個案，並非由時薪多少計算，而是透過查問有多少律師願意參與此全新的專業領域。

香港律師會
香港大律師公會



THE
LAW SOCIETY
OF HONG KONG
香港律師會



Press release
(For immediate release)

25 November 2009

Joint Press Statement

Screening of Convention Against Torture (CAT) Claims

The Law Society and the Bar Association have established a Joint Working Group (WG) to work together on the legal profession's response to the Administrative Scheme to handle CAT claims. The WG notes an article in *Ming Pao* on 24 November 2009 which, citing "Government sources", claimed that once an agreement is reached between the Government and the Legal Profession, about 400 lawyers will be interested in participating in CAT claim cases. The WG stresses :

1. No such "*consensus*" or "*agreement*" has ever been reached with the Government over the Scheme, although the WG wishes to reach an agreement with the Government over the scheme which provides an appropriate level of pay to reflect the difficulty of an extremely serious "life and limb" nature of CAT claims.
2. The claim that "*approximately 400 lawyers*" are willing to participate in CAT claim cases for \$670 per hour is also incorrect, because the number of lawyers willing to participate in CAT claims cases was not obtained by reference to any particular charge per hour, but was rather as a result of a general enquiry as to how many lawyers might be willing to participate at all in such cases as a new area of specialty.

**The Law Society of Hong Kong
The Bar Association of Hong Kong**