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9 July 2012

Ms. Flora Tai,
Clerk to Administration of Justice and
Legal Services Panel,
Legislative Council Complex,
Legislative Council Road,
Central, Hong Kong

Dear Ms. Tai,

**Meeting of the Legco Panel on Administration of Justice and Legal Services
on 10 July 2012 ("AJLS Panel") – Agenda Item II – Further Expansion of
Supplementary Legal Aid Scheme**

The Law Society refers to the above topic and would like to address the following points for the AJLS Panel's attention:

Financial Eligibility Limit ("FEL")

The Law Society welcomes the increase of FEL to HK\$1.3m for SLAS as a step in the right direction. However, in view of the test for eligibility of legal aid under the Scott Report that "a person should have access to legal representation without undue financial hardship" with the objective "to ensure that no one is placed in a position that his standard of living is reduced below acceptable levels", the current FEL for SLAS may still be far too low and exclude a significant portion of the sandwich class. We note that, during the Opening of the Legal Year 2005, the then President of the Law Society emphasized as follows:-

"There is no reason in an affluent society like Hong Kong why the middle class or, indeed, every potential litigant should be denied access to the courts because of cost."

The Law Society urges the Administration to provide relevant updated information on legal costs and a clear time table for assessment of further increase of FEL.

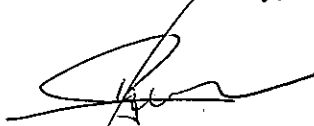
Scope of SLAS

We have the benefit of reading the Bar's Submissions dated 28 March 2011 and 16 December 2011 and after discussion with the Bar, the Law Society in principle shares the view of the Bar in respect of their proposed extended scope which would, subject to the merit test in Section 10(3) of the Legal Aid Ordinance, cover civil claims in which the potential Defendants are insured or would have sufficient assets to pay damages and costs. It would also promote access to justice by assisting those who otherwise cannot afford legal costs and reducing the number of litigants in persons.

Independence of Legal Aid Authority

Although the independence of legal aid authority does not form part of the said Agenda, it has been due for long since the Scott Report in 1986 and is also closely related to the expansion of legal aid. The Law Society has long advocated and continues to advocate for establishment of an independent legal aid authority. For a summary of the Law Society's position, please refer to the Appendix hereto. Only an independent legal aid authority with an expanded scope of service would promote access to justice and higher quality of justice.

Yours faithfully,



Edwin Lee
Assistant Director of Practitioners Affairs

APPENDIX

1. The right of access to justice is a fundamental right in Hong Kong under the Basic Law and the Hong Kong Bill of Rights Ordinance Cap.383. Legal aid is not “*social welfare*”, but an integral part of the justice system and the means of transforming such right into reality. There is no reason why legal aid authority should not be independent.
2. Legal Aid Department (“LAD”) is neither independent nor seen to be independent. It is staffed by civil servants who, as being part of the Government, are subject to potential pressure from the Government, whether through formal or informal channels, and accountable to other civil servants within the Government.
3. As early as 1986, in the Report on Legal Aid by the Government Working Party chaired by the Deputy Chief Secretary Mr. Alan Scott 1986, it was recognized that the neutral position of the LAD should be enhanced by giving it independent status.
4. In “*The Feasibility & Desirability of Establishment of an Independent Legal Aid Authority*” published in 1998 commissioned by the Legal Aid Services Council, it is at least acknowledged that the existing institutional set up encourages perception of lack of independence.
5. An independent legal aid authority is needed for making impartial decisions involving claims against the Government.
6. An independent legal aid authority has a mission to promote access to justice and has a better understanding of the need for expanding the scope of legal aid.
7. The staff recruited by an independent legal aid authority regards themselves as working for less well-off members of the society and will be more enthusiastic and helpful.
8. The existing institutional set up is bureaucratic in nature resulting in conservatism and reluctance in introducing changes to meet public needs.
9. An independent legal aid authority shall be set up outside the Government and be independent in all respects, including its policy making, day to day operation and also its staffing which makes it totally free from any hint of bias or influence from the Government.
10. The costs and transient difficulties over dis-establishment of LAD should not be obstacles against establishment of an independent legal aid authority. Public interest shall prevail.