

立法會
Legislative Council

LC Paper No. CB(2)2633/11-12
(These minutes have been seen
by the Administration)

Ref : CB2/SS/3/11

**Subcommittee on Proposed Resolution under
Section 7(b) of the Legal Aid Ordinance (Cap. 91)**

**Minutes of the second meeting
held on Thursday, 12 April 2012, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Members present : Dr Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon TAM Yiu-chung, GBS, JP
Hon Cyd HO Sau-lan
Dr Hon Priscilla LEUNG Mei-fun, JP

Public Officers attending : Item I

Home Affairs Bureau

Ms Aubrey FUNG Ngar-wai
Principal Assistant Secretary for Home Affairs
(Civic Affairs) 2

Mr Michael KWAN Ke-lin
Assistant Secretary for Home Affairs (2)1

Legal Aid Department

Ms Alice CHUNG Yee-ling
Deputy Director of Legal Aid (Administration)

Department of Justice

Ms Frances HUI Hang-ka
Senior Government Counsel

Clerk in attendance : Ms Amy YU
Chief Council Secretary (2)6

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Ms Wendy LO
Council Secretary (2)3

Miss Meisy KWOK
Legislative Assistant (2)6

Action

I. Meeting with the Administration

[HAB/CR 19/1/2, LS44/11-12, LC Paper Nos. CB(2)1559/11-12(02) to (07), CB(2)1642/11-12(01) and CB(2)1651/11-12(01)]

The Subcommittee deliberated (index of proceedings attached at Annex).

Proposed amendments to subsidiary legislation subject to the passage of the proposed resolution

2. Members noted the illustrations provided by the Administration on how the Legal Aid Regulations (Cap. 91A) and the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B) ("amendment regulations") would be amended to reflect the revisions in application fee and contribution rates subject to the passage of the proposed resolution, as set out in LC Paper No. CB(2)1651/11-12(01). Members raised no query.
3. Members agreed that the Subcommittee should recommend to the House Committee that it was not necessary to form a subcommittee to study the amendment regulations when they were tabled for negative vetting by the Legislative Council ("LegCo"), subject to the amendments

Action

Admin in the amendment regulations being materially the same as those in the illustrations provided to the Subcommittee, so that the proposed expansion of the scope of legal aid could take effect as soon as possible. Members also requested the Administration to highlight any differences between the illustrations provided to the Subcommittee and the amendment regulations when they were tabled in LegCo.

Follow-up actions

Admin 4. The Administration agreed to consider members' suggestion that the Legal Aid Department should provide employees and labour organizations assisting them with relevant information, such as the applicable contributions and costs liability, to assist the applicants in making an informed decision as to whether it was in their best interest to apply for legal aid under the Supplementary Legal Aid Scheme ("SLAS") for Labour Tribunal ("LT") appeals.

Admin 5. The Subcommittee also requested the Administration to consider making use of funds such as the Protection of Wages on Insolvency Fund and the Occupational Deafness Compensation Fund, or setting up a fund along those lines, to provide financial assistance to employees who had applied for legal aid under SLAS in LT appeal cases involving an important point of law. Members suggested that the issue be followed-up by the relevant Panels as appropriate.

Admin 6. Members suggested that the Law Drafting Division of the Department of Justice and the Legal Service Division of the Legislative Council Secretariat should study whether it was more appropriate to use "提起" or "提出" to match with "訴訟" or "法律程序" and report the outcome of the study to the Panel on Administration of Justice and Legal Services as appropriate.

II. Any other business

7. The Subcommittee completed its scrutiny work. Members agreed that the Subcommittee should report its deliberations to the House Committee on 20 April 2012.

8. Members supported the Administration giving notice to move the revised proposed resolution [LC Paper No. CB(2)1559/11-12(05)] at the Council meeting of 2 May 2012. Members noted that the deadline for giving notice of amendments was 23 April 2012.

Action

9. There being no other business, the meeting ended at 9:24 am.

Council Business Division 2
Legislative Council Secretariat
27 July 2012

**Proceedings of the meeting of the
Subcommittee on Proposed Resolution under
Section 7(b) of the Legal Aid Ordinance (Cap. 91)
on Thursday, 12 April 2012, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject	Action required
000131-000244	Chairman	Opening remarks	
000245-001522	Chairman Admin	Briefing by the Administration on its paper [LC Paper No. CB(2)1642/11-12(01)] on – (a) the contributions payable by an aided person in Labour Tribunal ("LT") appeals under the existing Ordinary Legal Aid Scheme and the proposed expanded Supplementary Legal Aid Scheme ("SLAS"); and (b) the rationale for replacing "提出" by "提起" as the Chinese rendition of "brought by" in the phrase "civil proceedings brought by" in the proposed amendments to Part I of Schedule 3.	
001523-002055	Mr TAM Yiu-chung Chairman Admin Mr Albert HO	Mr TAM Yiu-chung's concern about employees' difficulties in forking out the interim contribution of \$65,000 under SLAS, and their risk of losing the interim contribution should the case be lost. Mr Albert HO raised the point that an aided person who had won an LT appeal might have no financial gain if the employer concerned had become insolvent and could not pay up the legal costs ordered against him, as the Legal Aid Department ("LAD") would recover such costs from the interim contribution paid by the aided person.	
002056-002528	Ms Cyd HO Chairman Admin	Members' view that since legal representation was not allowed in LT and appeals against LT awards were made on a point of law, it was unfair that employees had to bear the litigation costs for such appeals. The Administration agreed to consider members' suggestion that LAD should	

Time marker	Speaker	Subject	Action required
		<p>provide employees and labour organizations assisting them with relevant information, such as the applicable contributions and costs liability, to assist the applicants in making an informed decision as to whether it was in their best interest to apply for legal aid under SLAS for LT appeals.</p>	<p>Admin (para 4 of minutes)</p>
002529-003154	<p>Mr Albert HO Chairman Admin Ms Cyd HO</p>	<p>The Chairman's enquiry on whether the Director of Legal Aid ("DLA") had the discretion to waive all or part of the contributions or legal costs payable by an aided person in respect of an LT appeal case which had raised an important point of law involving significant public interest.</p> <p>The Administration's response that under the existing legislation, DLA had no discretion to waive contributions payable by an aided person including applications relating to LT appeals. Nonetheless, in respect of the legal costs payable by the aided person, DLA had the discretion to make a waiver of certain charges up to a certain amount due to LAD by an aided person who was in serious financial hardship.</p> <p>The Administration was requested to consider taking advantage of funds such as the Protection of Wages on Insolvency Fund and the Occupational Deafness Compensation Fund, or setting up a fund along those lines, to provide financial assistance to employees who had applied for legal aid under SLAS in LT appeal cases involving an important point of law. Members suggested that the matter be followed-up by the relevant Panels as appropriate.</p>	<p>Admin (para 5 of minutes)</p>
003155 - 003948	<p>Chairman Admin Mr Albert HO ALA9 Ms Cyd HO</p>	<p>The Administration's advice that examples of existing legislation where "提起" was used to match with "訴訟" or "法律程序" could be found in section 50(7) of Patents Ordinance (Cap. 514), section 43BA(9) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and section 112(3) of Copyright Ordinance (Cap. 528).</p> <p>The legal adviser to the Subcommittee's advice that examples of using "提出" to match with "訴訟" or "法律程序" were also found in some existing legislation such as the Rules of the High Court (Cap. 4A) and</p>	

Time marker	Speaker	Subject	Action required
		<p>the Rules of the District Court (Cap. 336H).</p> <p>Members' view that the term "提出" was more generally accepted when referring to the institution or bringing of legal proceedings by a person. Members' suggestion that the Law Drafting Division of the Department of Justice and the Legal Service Division of the Legislative Council Secretariat should study whether it was more appropriate to use "提起" or "提出" to match with "訴訟" or "法律程序" and report the outcome of the study to the Panel on Administration of Justice and Legal Services as appropriate.</p>	<p>Admin (para 6 of minutes)</p>
003949 - 004840	Chairman Admin	Briefing by the Administration on its paper on the proposed amendments to subsidiary legislation subject to the passage of the proposed resolution [LC Paper No. CB(2)1651/11-12(01)].	
004841-005014	Chairman ALA9 Admin	The legal adviser to the Subcommittee informed members that the Administration had agreed to take on board her suggestion of adding the word "項" after the word "某" (i.e. 某項住宅物業.....) to the Chinese version of paragraph 5(b) of Part III to Schedule 3 of the revised proposed resolution [LC Paper No. CB(2)1559/11-12(05)].	
005015-005428	Chairman Admin ALA9 Mr Albert HO	<p>Legislative timetable and date of reporting to the House Committee</p> <p>Commencement arrangements</p>	