

立法會
Legislative Council

LC Paper No. CB(4)806/12-13
(These minutes have been seen
the Administration)

Ref : CB4/SS/6/12

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

**Minutes of the first meeting
held on Friday, 31 May 2013, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon Albert HO Chun-yan
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon WONG Yuk-man
Hon Dennis KWOK
- Members absent** : Hon LEE Cheuk-yan
Hon Paul TSE Wai-chun, JP
Hon KWOK Wai-keung
Hon TANG Ka-piu
Hon CHUNG Kwok-pan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Public Officers attending** : Item II

Ms Aubrey FUNG Ngar-wai
Principal Assistant Secretary for Home Affairs

Ms Alice CHUNG Yee-ling
Deputy Director of Legal Aid

Ms Juliana CHAN Oi-yung
Assistant Director of Legal Aid
- Clerk in attendance** : Miss Mary SO
Chief Council Secretary (4)2

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Ms Cindy CHAN
Senior Council Secretary (4)2

Ms Mandy WAN
Administrative Assistant (4)1

Action

I. Election of Chairman

Mr Albert HO, the member who had the highest precedence in the Council among those who were present at the meeting, presided over the election of the Chairman.

2. Mr Albert HO invited nominations for the chairmanship of the Subcommittee. Mr Albert HO was nominated by Mr Dennis KWOK and the nomination was seconded by Dr Priscilla LEUNG. Mr Albert HO accepted the nomination. As there was no other nomination, Mr Albert HO was elected Chairman of the Subcommittee.

II. Meeting with the Administration

File Ref: HAB/CR 19/1/49 -- Legislative Council Brief

LC Paper No. LS53/12-13 -- Legal Service Division Report on proposed resolution under section 7(a) of the Legal Aid Ordinance (Cap.91)

LC Paper No. CB(4)703/12-13(01) -- Marked-up of sections 5 and 5A of the Legal Aid Ordinance prepared by the Legal Service Division

3. Principal Assistant Secretary for Home Affairs ("PAS/HA") briefed members on the proposed resolution under section 7(a) of the Legal Aid Ordinance (Cap. 91) ("the Ordinance") which sought to amend the limits of financial resources of legal aid applicants for the Ordinary Legal Aid Scheme ("OLAS") and Supplementary Legal Aid Scheme ("SLAS") respectively as follows:

Action

	<i>Existing limit</i>	<i>Proposed limit</i>
OLAS	not exceeding \$260,000	not exceeding \$269,620
SLAS	exceeding \$260,000 but not exceeding \$1,300,000	exceeding \$269,620 but not exceeding \$1,348,100

4. PAS/HA pointed out that financial resources of legal aid applicants meant the aggregate of an applicant's yearly disposable income and disposable capital. A person's disposable income was his gross income minus deductible items as allowed under the Ordinance. A person's disposable capital was the sum of his credit balance, money due to him, the market value of non-monetary resources and the value of business or share in a company, minus deductible items as allowed under the Ordinance.

5. PAS/HA further pointed out that under OLAS and SLAS, applicants whose financial resources did not exceed the specified financial eligibility limits ("FELs") were financially eligible for legal aid. The FELs were reviewed annually to take into account changes in the Consumer Price Index (C) ("CPI(C)") to maintain their real values. The increase in the CPI(C) recorded during the 2012 review period (i.e. July 2011 to July 2012) was 3.7%. Accordingly, the FELs should be adjusted upward by 3.7%.

6. PAS/HA added that pursuant to the last five-yearly review of the criteria used to assess the FELs of legal aid applicants, legislative amendments were implemented in May 2011 to increase the FEL for OLAS from \$175,800 to \$260,000 and the FEL for SLAS from \$488,400 to \$1.3 million. The Home Affairs Bureau and the Legal Aid Department planned to report to the Panel on Administration of Justice and Legal Services ("AJLS Panel") progress of the next five-yearly review of the FELs in the 2013-2014 legislative session.

Discussion

FELs of legal aid applicants

7. Mr WONG Yuk-man said that annual review of the FELs of legal aid applicants should also take into account changes in litigation costs, in addition to movements in CPI(C).

8. PAS/HA responded that it was the practice of the Administration to review the FELs of legal aid applicants biennially to take into account changes in litigation costs. PAS/HA further said that the Administration planned to

Action

report to the AJLS Panel progress of the biennial review of the FELs of legal aid applicants in the next legislative session.

Scope of SLAS

9. Mr Dennis KWOK asked when the Administration would be in a position to report to the AJLS Panel on its review of the expansion of the scope of SLAS to cover more types of cases, following the injection of \$100 million by the Government into the Supplementary Legal Aid Fund ("SLAF") in December 2012.

10. PAS/HA responded that as the scope of SLAS had recently been substantially expanded to cover more types of cases, such as monetary claims against the vendors in the sale of first-hand completed or uncompleted residential properties if the claims exceeded \$60,000 and more professional negligence claims, in November 2012, more time was needed to assess the impact of such expansion on the financial viability of SLAF and the operational experience gained. PAS/HA further said that the Administration would consult the Legal Aid Services Council ("LASC") on whether the scope of SLAS should be further expanded, after acquiring more operational experience, before reporting to the AJLS Panel in the next legislative session.

11. The Chairman said that consideration should also be given to expanding the scope of SLAS as well as OLAS to cover defamatory libel cases. PAS/HA agreed to convey the Chairman's suggestion to the LASC for consideration.

Contributions under OLAS

12. Mr WONG Yuk-man said that the amounts of contributions required of the successful applicants of OLAS, ranging from \$1,000 to \$65,000, were too high. Mr WONG cited a case whereby the amount of contribution required of a successful applicant of OLAS was two to three times the applicant's monthly income.

13. Deputy Director of Legal Aid ("DDLA") responded that over 80% of the aided persons of OLAS either were not required to pay contributions or paid a contribution of not more than \$2,000. DDLA further said that if an aided person of OLAS was unable to pay the contribution in one go, the aided person could pay the contribution by installments. Once the aided person paid the first installment, a Legal Aid Certificate would be issued and the services of a solicitor or, if necessary, a barrister would be assigned to the aided person to conduct the court proceedings.

Action

Commencement of the resolution

14. PAS/HA advised that the Secretary for Home Affairs ("SHA") planned to move the proposed resolution at the Council meeting on 26 June 2013. If the proposed resolution was passed by the Legislative Council ("LegCo"), the Administration would publish a Commencement Notice in the Gazette on 28 June 2013 appointing another day in July 2013 on which the resolution would come into operation.

15. Assistant Legal Adviser 9 advised that similar proposed resolution in the past specified that the resolution would come into operation on a day on which the resolution was published in the Gazette.

(Post-meeting note: Having consulted the Department of Justice, the Administration confirmed that the resolution would come into operation on the day on which the resolution was published in the Gazette.)

Conclusion

16. The Chairman concluded that the Subcommittee had no objection to the SHA giving notice for moving the proposed resolution at the Council meeting on 26 June 2013. A report on the deliberations of the Subcommittee would be submitted to the House Committee on 14 June 2013.

III. Any other business

17. There being no other business, the meeting ended at 11:10 am.

Council Business Division 4
Legislative Council Secretariat
20 June 2013

**Proceedings of meeting of the
Subcommittee on Proposed Resolution under Section 7(a) of
the Legal Aid Ordinance (Cap. 91)
held on Friday, 31 May 2013, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000320 - 000340	Mr Albert HO Mr Dennis KWOK Dr Priscilla LEUNG	Election of Chairman.	
000341 - 000735	Chairman Administration	Briefing by the Administration on the proposed resolution under Section 7(a) of the Legal Aid Ordinance (Cap. 91) which sought to amend the financial eligibility limits ("FELs") for the Ordinary Legal Aid Scheme ("OLAS") and the Supplementary Legal Aid Scheme ("SLAS").	
000736 - 002406	Mr Dennis KWOK Administration Chairman Mr WONG Yuk-man	<p>Mr Dennis KWOK's enquiry as to when the Administration would be in a position to report to the Panel on Administration of Justice and Legal Services ("AJLS Panel") on its review of the expansion of the scope of SLAS to cover more types of cases, following the injection of \$100 million by the Government into the Supplementary Legal Aid Fund in December 2012.</p> <p>The Administration's response that the Home Affairs Bureau and the Legal Aid Department planned to report progress to the AJLS Panel in the 2013-2014 legislative session on the next review of the scope of SLAS in light of the operational experience acquired after the implementation of the expanded scope of SLAS in 2012.</p> <p>Responding to the Chairman's suggestion that defamatory libel cases should also be covered under the scope of legal aid schemes, the Administration agreed to convey the suggestion to the Legal Aid Services Council for consideration.</p> <p>Mr WONG Yuk-man's query as to whether the Administration had taken into account changes in litigation costs when seeking to amend the FELs under the proposed resolution.</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>The Administration's explanation that movements in Consumer Price Index (C) ("CPI(C)") had been taken into account when the annual review of the FELs of the legal aid applicants was conducted whereas changes in litigation costs would be taken into account when the Administration conducted the next biennial review of the FELs which was to be due in the 2013-2014 legislative session.</p> <p>Mr WONG Yuk-man's concern that the amounts of contributions required of the legal aid applicants of OLAS upon acceptance of the legal aid were too high.</p> <p>The Administration's response that the past records showed that –</p> <ul style="list-style-type: none"> (a) over 80% of the aided persons of OLAS either were not required to pay contributions or paid a contribution of no more than \$2,000; and (b) if an aided person of OLAS was unable to pay the contribution in one go, the aided person could pay the contribution by installments. <p>In response to Mr Dennis KWOK's enquiry, the Administration advised that –</p> <ul style="list-style-type: none"> (a) the preparatory work for the next five-yearly review of the FELs was underway; and (b) the Home Affairs Bureau and the Legal Aid Department planned to report to the AJLS Panel the progress of the next five-yearly review of the FELs in the 2013-2014 legislative session on top of the biennial review to take into account changes in litigation costs. 	
002407 - 002710	Chairman Assistant Legal Adviser 9 Administration	<p><u>Commencement of the resolution</u></p> <p>The Administration advised that the Secretary for Home Affairs ("SHA") planned to move the proposed resolution at the Council</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>meeting on 26 June 2013. If the proposed resolution was passed by the Legislative Council, the Administration would publish a Commencement Notice in the Gazette on 28 June 2013 appointing another day in July 2013 on which the resolution would come into operation.</p> <p>The Subcommittee had no objection to the SHA giving notice for moving the proposed resolution at the Council meeting on 26 June 2013. A report on the deliberations of the Subcommittee would be submitted to the House Committee on 14 June 2013.</p>	

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Legislative Council Secretariat
20 June 2013