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法律援助服務局  
LEGAL AID SERVICES COUNCIL

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27 May 2013

The Honourable C Y LEUNG, GBM, GBS, JP  
The Chief Executive  
Hong Kong Special Administrative Region  
People's Republic of China  
Tamar, Hong Kong

Dear Sir,

**Independence of Legal Aid**

Further to my letter dated 30 April 2013 submitting the Council's recommendations on the feasibility and desirability of the establishment of an independent legal aid authority, I forward herewith a document from our new member, Ms Josephine PINTO, who has strong views on submitting her views on the independence issue given in a letter that was tabled at the Council meeting held on 22 March 2013. Such document may be regarded as an elaboration of what she expressed at the said Council meeting.

Yours sincerely,

Dr Eric Li Ka Cheung  
Chairman  
Legal Aid Services Council

**Miss Pinto expressed her view that :-**

1. The Report is inadequate in that its Recommendation (that the status quo should be maintained - "the Recommendation") is not supported by its own evidence. This can be seen from the following :-

(a) The Report's conclusion that the problem is only one of "perception" is contrary to its own evidence that 68% of participants surveyed think LAD should increase its independence from the Government. (*pp. 155-160, "Tables", 9<sup>th</sup> Draft*)

(b) The Report's Survey of other Jurisdictions does not support the Recommendation in that :-

(i) 7 out of the 9 jurisdictions surveyed have independent Legal Aid Authorities. These are :-

(1) England and Wales

(2) Scotland

(3) Ontario, Canada

(4) New South Wales, Australia

(5) Republic of Ireland

(6) Northern Ireland

(7) Netherlands

*[In the case of England and Wales, it currently has an independent Legal Authority but its present government is trying*

*to take action to return to the position where the Legal Aid Authority was under the Executive. This decision has been made for financial reasons a consideration which does not apply in Hong Kong at present];*

(ii) 2 out of the 9 jurisdictions surveyed (i.e. Finland and New Zealand) do not have independent Legal Aid Authorities but have social / cultural / juridical environments very different from Hong Kong and which provide other safeguards to their citizens;

(iii) In fact, the Report's Survey of other Jurisdictions seems to support a conclusion that, in most other Jurisdictions which were chosen for the survey, the Legal Aid Authority is an independent body - and, consequently, it would be appropriate for Hong Kong to have one too.

(c) The Tables in the Report suggest that most lawyers surveyed were in favour of an independent body while most recipients of Legal Aid surveyed were not. This data is difficult to interpret accurately.

*[One could infer that the lawyers' preference was motivated by self-interest. Yet, another inference could be that Legal Aid recipients surveyed did not wish to express (to anyone, including those conducting the survey) any dissatisfaction with services being provided-since such recipients might perceive (mistakenly) that this*

*might get back to those handling their litigation and thereby jeopardize its outcome].*

2. The Legal Aid Services Council had concluded on two previous occasions (1998 and 2003) that the introduction of an independent Legal Aid Authority was **long overdue** in Hong Kong. The Report gave no good reasons (such as change in relevant material circumstances) to justify a departure from such conclusion.
  
3. For the above reasons, it would be unwise for the LASC to rely on this Report and to adopt its recommendations.

*[Enclosed as Annex A is a Commentary on the Report and Draft Letter to the CE which was sent by Ms Pinto to the LASC]*

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**Draft Letter to CE (“Letter”) and Deloitte’s Draft Report  
dated February 2013 (“Report”) \***

*(\*All references to page numbers below are to pages in the  
Report).*

**1. Paragraph 2 of Letter**

This paragraph is, arguably, misleading in that there is no mention of previous decisions (including **previous conclusions** by LASC) in favour of an independent body, such as:-

- the 1993 LegCo Motion **in favour of independence** of Legal Aid (which led to setting up of LASC) (*p. 177*);
  
- the conclusion of the 1998 LASC Report under then Chairman JP Lee that the **“establishment of an independent Legal Aid Authority is the natural conclusion of more than three decades of debate in the community”** (*p. 178*);

## 2. Paragraph 3 of Letter

- In context of the matters set out above, it is **not easy to understand** the recommendation in the Report that “*there is no immediate need to establish an independent legal aid authority (“the Recommendation”)*).
- At some stage, the Recommendation will have to be defended before the relevant LegCo Panel.
- I am of the view that the Recommendation will be **difficult to defend** with any or any sufficient credibility for the reasons set out below.

### ***The Recommendation is not supported by Evidence in the Report***

- The Report’s conclusion that there is only a “perception problem” is contrary to the evidence that 68% of participants surveyed think LAD should increase its independence from the Government.

(pp. 155 – 160,  
“Tables”)

- The Tables also suggest that most lawyers surveyed were in favour of an independent body while most recipients of Legal Aid surveyed were not. This data is difficult to interpret accurately.
  
- One could infer that the lawyers' preference was motivated by self-interest. Yet, another inference could be that Legal Aid recipients surveyed did not wish to express (to anyone, however independent) any dissatisfaction with services being provided – since they might perceive (mistakenly) that this would get back to those handling their litigation and thereby jeopardize its outcome.
  
- *[This brings to mind 2 thoughts :-*
  - *Churchill's (independent and freely offered) conclusion that there are "lies, damned lies and statistics";*
  - *the not-too-distant Robert Chung/Tung Chee Wah debacle over attempts by an administration to influence survey results)].*
  
- In this context, it is worth noting that the 2009 LASC letter to the CE (signed by then Chairman Paul Chan) suggests that the problem to be addressed by an independent body is no more than a **"perception problem"** (p. 180, para. 12).

*(Those more familiar with the administrative law concept that **“justice must not only be done but must be seen to be done”** will know that there are good reasons for this legal requirement and will also know what those reasons are. For reasons of brevity, I will not set those out here but will do so, if so requested.)*

- In any event, Paul Chan’s idea seems not to have been supported by any evidence which could be disclosed and/or scrutinized.
- He was unable to provide details of such supporting evidence when this was requested (*p. 181, para. 14*).
- Indeed, his claim that the LASC Working Party had ***“invited comments from the Legal Profession”*** was **denied** by the HK Bar Association (*p. 181, paras 15-16*).

**Comparison with other jurisdictions does not support the Recommendation –in fact, supports the opposite conclusion**

- Of the 9 jurisdictions surveyed, 7 out of 9 jurisdictions have independent bodies. Only 2 (*Finland and New Zealand*) have bodies which are not independent (*pp. 113 – 124*).
- The Government in England and Wales has recently announced a decision to move from a non-departmental public body to a government agency within the sponsoring Ministry.



This is for financial reasons which are, thankfully, not relevant here. (p. 113)

- NZ and Finland operate government –run legal aid services but in very different contexts (p.114 and 119).
- The overview of international jurisdictions does not support the Recommendation. If anything, it tends to support the opposite conclusion.

### 3. Conclusion

- This issue has been on the table since 1985 (almost 30 years). Both as a taxpayer and a member of the LASC, I see no justification to keep revisiting it, incurring not insignificant fees on each occasion.
- I think the move to an independent body should be made - **and made now – or as soon as reasonably possible – as I can discern no reason against it in this Report.**
- There will, of course, be transitional problems. However, these problems will exist at **whatever time** the move is made.
- The existence of foreseeable transitional problems should

not (and **logically cannot**) be an overriding consideration on the issue of change.

*[In fact, if this were so, then (logically) it would be an overriding factor at all times. Hence, there would be no need to consider change at all and no need to for the setting up of the LASC.]*

- I would therefore suggest that, in accordance with the prevalent “case management” culture, further transitional steps be identified and milestone dates be set for the implementation thereof, initially by the LAD to be finalized after discussion at the LASC.

Josephine Pinto

21.3.13