



法律援助服務局
LEGAL AID SERVICES COUNCIL

KNR
5 492
J53
1998

Report

on

The Feasibility & Desirability

of the Establishment of

an Independent Legal Aid Authority

1998

KNR
5.492
J53
1998

CONTENTS

	Chapters	Page
1.	Summary of Recommendations	2
2.	Background	4
3.	Consultants' Findings	6
4.	Consultants' Models & Recommendations	11
5.	Council's Deliberations	14
6.	Recommendations	19
7.	Legal Aid Department Staff Concern	24
8.	Implementation	26
9.	Annexes I - II	28

Chapter One

Summary of Recommendations

1.1 The Legal Aid Services Council (LASC) recommends that :-

- in the long term, legal aid services should be as independent as possible;
- ultimately all forms of legal aid service should be delivered by one single institution; and
- to achieve these objectives, a phased approach is desirable.

Specifically, the Council recommends that :

1.2 An independent statutory legal aid authority (LAA) should be established, with a board to reflect relevant interests, including a member nominated by Duty Lawyer Service (DLS). LAA would advise the Government on legal aid policies and be accountable for the delivery of legal aid services currently under the Legal Aid Department (LAD).
[Paras 6.1 - 6.4]

1.3 The Director of Legal Aid (DLA), the Deputy Directors and Assistant Directors should be seconded to LAA upon its establishment. By the end of the first year, they will need to decide whether to apply to join LAA or to remain as civil servants and be redeployed elsewhere.
[Paras 6.5 - 6.6]

1.4 At the same time, the rest of the staff in LAD should also be seconded to LAA upon its establishment to ensure sustained delivery of legal aid services. By the end of the second year, staff will need to decide whether to apply to join LAA or to remain as civil servants and be redeployed elsewhere. [Paras 6.7]

1.5 Upon establishment of LAA, all new staff should be employed by LAA itself. [Para 6.8]

1.6 The operation of LAA should be financed from public revenue and current funding arrangements, with no ceiling on LAD's expenditure on legal services, should continue so as to ensure that operational independence will not be compromised by financial constraints. [Para 6.11]

1.7 An independent Official Solicitor's (OS) Office should be established, with a dedicated OS. [Para 6.12]

1.8 With regard to DLS, the lay membership of DLS Council should be increased to the same number as members of the legal profession, i.e. 8 for each type. Also, one of the lay members should be nominated from LAA's board. At the end of the third year of LAA's establishment, LAA should review the feasibility of DLS merging with it. [Paras 6.13 - 6.14]

Chapter Two

Background

2.1 LASC is a statutory body set up in September 1996 under the LASC Ordinance (Cap 489) to oversee the administration of legal aid services provided by LAD and to advise the Chief Executive on legal aid policy. The Council is chaired by a non-official and comprises eight non-official members and one ex-officio member, DLA. It has a secretariat of seven staff, headed by a Council Secretary, all of whom have been seconded from the civil service since the Council's inception in September 1996. The Council is publicly funded. Given its small secretariat, the Council wishes to place on record its appreciation to the Director of Administration for providing a directorate level Administrative Officer to act as co-ordinator for the work leading up to this report.

2.2 Under Section 4(5)(b) of Cap 489, the Council is required to advise the Chief Executive on the feasibility and desirability of the establishment of an independent LAA. Accordingly, Consultants were commissioned in October 1997 to study all publicly funded legal aid services provided by both LAD and DLS with reference to those offered in other common law jurisdictions. While this study focuses on the issue of independence, the Consultants were instructed that their recommendations should ensure that the quality and scope of legal aid services should be at least on a par with existing services and that the administration of justice should not be compromised. The study was completed in April 1998.

2.3 The Consultants conducted extensive consultation with stakeholders and a public opinion survey to assess the desirability, practicability and cost-effectiveness of setting up an independent legal aid body. They identified a number of institutional models for LAD and DLS, ranging from maintenance of the status quo to partial or complete disestablishment of LAD and incorporation of DLS into the new LAA.

Chapter Three

Consultants' Findings

Legal Aid Department and Legal Aid Services Council

(a) Current Position

3.1 LAD, which has a total staff of around 600, provides legal representation in civil and criminal cases to any person in Hong Kong, resident or non-resident, who is able to satisfy DLA as to financial eligibility (the means test) and the justification for legal action (the merits test). Legal assistance is provided with or without payment of a contribution. Upon grant of legal aid, the cases are assigned to a lawyer either in private practice or in LAD's litigation division.

(b) Institutional

3.2 Institutionally, LAD is not independent of the Government*. As a government department staffed by civil servants, the potential exists for LAD's decision-making to lack independence from the Government. There are non-institutional safeguards of independence, including the requirement under the Legal Aid Ordinance for DLA to consider applications according to statutory criteria. Also, anyone refused legal aid in civil cases or otherwise aggrieved has the right to appeal to an independent judicial authority or to seek a judicial review (there is no right

(* : When discussing independence issues in this report, the term 'Government' generally means 'the Administration'.)

of appeal in criminal cases, except to the Court of Final Appeal). Although these ensure an independent check on DLA's exercise of statutory powers, the independence issues identified cannot be addressed fully by non-institutional mechanisms.

3.3 Although LASC provides an element of control over LAD, its current powers and resources are too limited to provide strong assurances that LAD is not subject to pressure from the Government.

(c) Operational

3.4 It is possible for the Government to pressure LAD through formal or informal channels as LAD is part of the Government and DLA reports to the Director of Administration. It has been suggested that LAD officials might respond to the expressed or perceived wishes of the Government because, as civil servants, they may feel it is in their career interests to do so.

3.5 Stakeholder views are mixed on operational independence. In 1993, the Legislative Council (LegCo) voted in favour of independence. The legal professional bodies are concerned about the independence of legal aid administration from the Government. However, the majority of community groups and the general public accept the status quo, while most of LAD's departmental staff are concerned about institutional change.

3.6 LASC's limited powers, its reliance on LAD for information and analysis and its exclusion from involvement in reviewing

individual cases constrain its effectiveness in safeguarding LAD's independence.

(d) Stakeholders' Views

3.7 There is some concern about the independence of LAD's operation, but this concern is not widely and deeply held among all groups. In a public opinion survey of 1,000 members of the general public, 55% of those who had heard of LAD believed that it operated independently. 21% believed it did not and a further 21% did not know. The legal profession and some Legco members share a greater degree of concern. Others think that it is confusing for two bodies (LAD and DLS) to be involved in the delivery of legal aid services. The community's views on this issue are therefore very diverse.

3.8 The legal professional bodies support the establishment of an independent authority. They are concerned that under the current arrangements LAD staff are civil servants accountable to other civil servants within the Government.

3.9 The views of LAD clients on independence are mixed, and like community groups, they are more concerned about quality of service. There is some criticism of LAD for having a bureaucratic style which is not sufficiently client-focused.

3.10 The views of legal aid practitioners are also mixed. Some consider that LAD operates independently while others believe that in certain sensitive cases affecting the Government there is insufficient transparency.

(e) Funding

3.11 Legal aid services are publicly funded, which is the usual practice in other common law jurisdictions. Although some countries have experimented with levies, these cannot wholly replace public funding. One of the great strengths in Hong Kong is that there is no ceiling on LAD's expenditure on legal services. This means that there are no funding constraints to prevent those who meet the statutory criteria from receiving legal aid. In some other countries where there are funding constraints there is a strong perception that the Government has sought to influence the legal authority's priorities in its use of limited funds by indicating its preferences for the administration of legal aid.

Duty Lawyer Service

3.12 The Hong Kong Bar Association and The Law Society of Hong Kong jointly run DLS which provides legal representation in the magistracies, offers free legal advice at selected District Offices, and operates a telephone hot-line for legal enquiries. The Council of DLS consists of 8 nominated members from the legal profession and 3 appointed lay persons. The Service employs its own staff, totalling 92. As DLS work is a source of business opportunities for the legal profession, this could give rise to a potential conflict of interest.

3.13 DLS is publicly funded although, unlike LAD, there is a cash limit on expenditure. Policy and funding matters are the responsibility of the Director of Administration.

3.14 In a public opinion survey of 1,000 members of the general public, 53% of those who had heard of DLS believed that it operated independently. 24% believed that it did not and a further 17% did not know.

Official Solicitor

3.15 The present situation where DLA is also OS (who protects the interests in litigation of people under legal disability, such as children and the mentally handicapped) is not ideal as it could give rise to potential conflict of interest where OS and DLS are on opposite sides of the same case. However, the number of cases is small and steps are taken to mitigate the risks (e.g. briefing out to private lawyers).

Chapter Four

Consultants' Models and Recommendations

Legal Aid Department

4.1 In order to address the above concerns, the Consultants identified 5 models, ranging from maintenance of the status quo to establishment of a new Legal Aid Authority (LAA) with enhanced powers and the ability to employ all staff involved in the delivery of legal aid services.

4.2 Model 0 is the maintenance of current institutional arrangements, with minor changes to enhance independence (e.g. strengthening the appeals procedure).

4.3 Model 1 is the establishment of a new statutory LAA with full authority and accountability for the administration of legal aid. LAA would oversee LAD on all matters, including staff and the review of individual cases in special circumstances. In addition, LAA would be given extra professional support to help it analyse LAD's operational and financial plans at an estimated additional recurrent cost of \$2.5 million.

4.4 Under Model 2, DLA and his 3 Deputy Directors would cease to be civil servants, become employees of the statutory LAA and report unambiguously to it. Assuming none of the pensionable incumbents took up employment with LAA, the maximum cost of abolishing their offices would be around \$35 million.

4.5 Under Model 3, all staff in LAD would be disestablished and become employees of the statutory LAA. Assuming none of the pensionable incumbents took up employment with LAA, the maximum cost of abolishing their offices would be around \$430 million.

4.6 Under Model 4, LAA would be a non-government body with a structure similar to the existing DLS (i.e. a company limited by guarantee). Cost would be the same as Model 3.

Duty Lawyer Service

4.7 The Consultants identified 4 models with regard to DLS.

4.8 Model A is maintenance of the status quo, irrespective of changes to LAA and LAD.

4.9 Model B is LAA (either statutory or non-government) assuming authority and accountability for DLS's functions, while DLS remains the employer of the staff.

4.10 Model C is merger of DLS with LAA, while DLS continues to be supervised by DLS Council within guidelines to be determined by LAA.

4.11 Model D is full integration of DLS with LAA.

4.12 The financial costs of the above models are negligible. DLS operates a provident fund for its staff which would cover any severance costs that may arise.

Consultants' Recommendations

4.13 The Consultants recommended Model 2 for LAA/LAD because it offered the most appropriate trade-off between impact on independence and cost, and because it was considered sufficient to address the independence issues they had identified.

4.14 They recommended Model A for DLS on the grounds that, although the legal profession's control of the governance of DLS was less than ideal, the disruption caused by bringing it under LAA was not justified at this time. The matter could be reviewed in future.

4.15 They recommended establishment of an independent OS's Office with a dedicated OS to address the potential conflict of interest to which current arrangements give rise.

4.16 Finally, they recommended that current funding arrangements, with no ceiling on LAD's expenditure on legal aid services, was a strength that should as far as possible be preserved.

Chapter Five

Council's Deliberations

5.1 The Council set up a Working Party in October 1997 to supervise the Consultants' work, examine their recommendations and consider the way forward. The Working Party met 16 times to consider all the various issues involved before submitting its final recommendations to the Council on 26 August 1998. In the process, the Council received representations from the professional officers and law clerks of LAD expressing their concern regarding disestablishment.

5.2 The Council acknowledges the Consultants' findings and agrees that there are issues to be addressed.

5.3 It believes that it is an institutionally flawed arrangement for legal aid to be administered by civil servants because of the risk of pressure from the Government. Moreover, the present institutional set-up encourages the perception of a lack of independence. Normal fairness principles require those who administer legal aid not only to be independent and impartial but manifestly seen to be independent and impartial. As the Government funds legal aid services, there may be an impression that "he who pays the piper calls the tune". Institutional independence for legal aid, therefore, is even more important.

5.4 Operational independence can only be guaranteed by institutional independence, in the sense that civil servants may find it difficult to exercise discretionary powers against the Government when they are themselves part of the Government. Lawyers directly employed by the Government should not have to make decisions about suing the

Government. This anomalous situation of conflict of interest has developed in Hong Kong as a matter of administrative convenience.

5.5 The Council concludes that there are inherent weaknesses in the existing arrangements for legal aid services which should be rectified. These weaknesses, particularly in the case of LAD, lend themselves to a situation where :-

- most stakeholder groups express varying degrees of concern about independence while around one in five members of the general public believes that LAD does not operate independently;
- such doubts in turn undermine public confidence in the current arrangements and raise the question whether they are in the best interests of legal aid applicants or clients;
- the Government may, even with the best of intentions, be suspected of and criticised for influencing the decisions of LAD, whether it has done so or not; and
- the departmental staff of LAD believe that, as civil servants, their job security allows them to perform their duties independently. However, independence should be built upon an institutional framework which is independent of both the Government and the legal profession.

5.6 Hong Kong's economic prosperity and social harmony rest on sound principles and institutions, such as the rule of law and an

independent judiciary. Although in the past legal aid was regarded as a form of social welfare, it is actually an integral part of the system of justice and translates a theoretical right to justice into a practical reality. Therefore, the independence of the legal aid system is not a matter of perception but of practical reality. A proper institutional structure would insulate and protect those operating the system so that they could provide independent and sound decisions which were not influenced by the Government.

5.7 The Council believes that in order to enhance the rule of law, the administration of legal aid services should be as independent as possible. Justice and the feeling that justice has been done is a consequence of knowing that a case has been properly presented to and investigated by an independent body. The Council also believes that, eventually, one body should be responsible for managing and be accountable for all legal aid services in Hong Kong. Both objectives should be achieved by taking a gradual approach to ensure a smooth and effective transition.

5.8 The Council considers that there is sufficient concern about the independence of legal aid administration to justify the setting up of a new, independent LAA. However, this should be implemented in phases to avoid inconvenience to users, to facilitate staff bridging over and operational management, and to minimise disruption and cost.

5.9 It also considers that it is in the best interests of economy, consistency, service delivery and client benefits that ultimately one single institution should deliver all types of legal aid services currently provided by LAD and DLS. Similarly, a phased approach should be adopted.

5.10 An independent LAA would enhance management accountability, assure greater transparency and increase public confidence in the independent administration of legal aid services. There should be a clear separation of the powers of the Government to make legal aid policies on the one hand and to operate legal aid services on the other. This would recognise and give expression to institutional protection for operational independence.

5.11 LAA would provide a more independent framework in which the culture of independence could be properly fostered, thus enhancing service delivery.

5.12 LAA being at arm's length from the Government would engender greater public confidence in its independence.

5.13 LAA would have the option whether to contract out sensitive cases or retain them, thus increasing in-house competence.

5.14 LAA would provide the foundation for substantial service improvements. Once untied from civil service control, legal aid services could become more flexible and responsive to changing needs, less bureaucratic and more client-orientated. More emphasis could also be placed on legal aid education, research and publicity.

5.15 The system of justice in Hong Kong should rest on an independent judiciary, an independent legal profession and an independent legal aid service. Knowledge that the providers of legal aid services are independent gives a higher quality of justice.

5.16 The establishment of an independent legal aid authority is the natural conclusion of more than three decades of debate in the community.

Chapter Six

Recommendations

Legal Aid Services Council and Legal Aid Department

6.1 The Council accepts the Consultants' recommendation that an independent statutory LAA should be established. LAA would be governed by a board having all the powers and responsibilities of the board of a body corporate. In addition, it would advise the Government on legal aid policies and be accountable for the delivery of legal aid services currently under LAD.

6.2 The membership of the board would reflect the different interests related to legal aid, such as the legal profession, the needs of the legally assisted, service quality, management, financial control and public administration. In addition, the DLS Council would be invited to nominate a member to sit on the board to facilitate interface between the two bodies. The detailed composition is at Annex I. All members would be appointed by the Chief Executive, HKSAR.

6.3 Specifically, the role of the LAA should include :-

- reviewing and approving the overall management and operational policies for providing legal aid services;
- reviewing and approving for submission to the Director of Administration financial plans and budgets to implement those policies;

- appointing and reappointing staff, and terminating staff appointments;
- reviewing the performance of the legal aid operations for which LAA has responsibility, including independence, quality of service and value for money; and
- reviewing (but not directing the handling of) individual cases in special circumstances.

6.4 The Council accepts that the powers of the board should not be exercised in a manner which is inconsistent with the powers of DLA under the Legal Aid Ordinance.

6.5 Since LAA would be responsible for legal aid service quality, it is only reasonable and cost-effective for the LAD, which delivers the service, to be accountable to it. In this regard, the Council accepts the Consultants' recommendation that the Director and Deputy Directors of LAD should be employed directly by LAA. The Council also considers that the objective of accountability and effective management would be better served if the Assistant Directors were also employed by LAA. Together, they would form a more effective team to manage the change, especially when staff are uncertain about their final choice of career, either with the Government or LAA.

6.6 In the interests of continuity and maintenance of services, the Council considers that these staff should be seconded to LAA upon its establishment and should decide by the end of the first year whether to apply to join LAA or remain as civil servants and be redeployed

elsewhere. This is to address the management problems identified by the Consultants (i.e. civil servants taking instructions from non-civil servants) and to create a more equitable arrangement where the senior directorate is given the same choice as the rest of the staff to sample the working environment of LAA before being asked to make a choice.

6.7 The Council further recommends that the rest of the staff in LAD be seconded to LAA upon its establishment to facilitate the sustained delivery of legal aid services. By the end of the second year, they will need to decide whether to apply to join LAA or to remain as civil servants. This arrangement will ensure greater independence and better management, and is in accordance with civil service rules which do not encourage extended secondment of civil servants.

6.8 Upon establishment of LAA, all new staff should be employed by LAA itself.

6.9 Assuming all pensionable departmental staff in LAD (247 staff) chose to take abolition of office terms rather than join LAA, the maximum cost of these proposals would be around \$430 million. The cost of the interim arrangement would be around \$43 million.

6.10 It has to be recorded that :-

- (a) One member argues that there is no widespread public concern about the independence of LAD, except from the legal profession and some LegCo members, and that the public is more concerned about the quality of service. If it was thought that the Government could not run an

independent legal aid service, then the logic was that it could not fund one either. Also, the full consequences of disestablishing LAD, in terms of cost and disruption to staff and services, had not been taken into account. After two years' operation, therefore, the new LAA (Model 1) should review the situation to consider whether any further steps should be taken. (see Annex II)

- (b) DLA did not consider the Council's recommendations were supported by the Consultants' findings nor justified by the costs of disestablishing LAD and the consequent disruption to staff and services. His view was that the present absence of ceilings on legal aid costs and the government support enjoyed by LAD (e.g. technical advice on information technology, training facilities etc.) provided a greater assurance of service quality than the proposed arrangements.

6.11 The Council accepts the Consultants' recommendation that the operation of LAA should be financed from public revenue and that the present arrangement where there is no ceiling on LAD's expenditure on legal services should continue so as to ensure that operational independence will not be compromised by financial constraints.

Official Solicitor

6.12 The Council accepts the Consultants' recommendation to establish an independent OS's office, with a dedicated OS. This will address the potential conflict of interest and enhance the independence of

both offices. In addition, it will allow the public direct access and enable OS to handle more litigation.

Duty Lawyer Service

6.13 The Council notes the Consultants' finding that DLS may give the impression of conflict of interest because it is run by the legal profession but at the same time is a source of business for them. This perception would largely be removed if the lay membership of DLS Council were increased. Accordingly, it is recommended that the DLS Council should have the same number of lay members as the legal profession, i.e. 8 for each type. Also, one of the lay members of the DLS Council should be nominated by LAA. This is to enhance interface of the two bodies, and is consistent with the long term objective of one institution providing all types of legal aid services.

6.14 Towards this end, therefore, the Council recommends that at the end of the third year of LAA's establishment, LAA should review the feasibility of DLS merging with LAA.

Chapter Seven

Legal Aid Department Staff Concern

7.1 The departmental staff of LAD have expressed strong concern on disestablishment. They maintain that they are more independent as civil servants than they would be as employees of LAA because the majority are employed on permanent terms of appointment, as opposed to contract terms for future LAA employees. Given their job security, they are in a better position to make the most independent professional judgement, without fear or favour. In the past, legal aid has been granted in many cases resulting in the Government being taken to court. As employees of LAA, they might have to compromise their decisions in order to please members of LAA.

7.2 As funding is limited in other countries where legal aid is operated by non-government bodies, they are concerned that the Government might withdraw its unlimited funding for LAD's expenditure on legal services if they were to be administered by an independent body. This would reduce independence by preventing eligible people from receiving legal aid due to funding constraints and encourage government intervention in the prioritisation of services.

7.3 They are also concerned about disruption to services, loss of job security, effect on morale, pension arrangements, likely pay package, worries about future promotion prospects and management problems associated with LAA employing senior directorate officers.

7.4 They hope that a decision on future administrative arrangements can be taken as quickly as possible as rumours of disestablishment have already caused uncertainty among staff and affected their morale.

7.5 The Council values the performance of LAD staff. While most of the issues raised have been considered by the Consultants, the Council believes that the Government should make an early decision on the future operational arrangements for legal aid services. Consultation with staff should begin as soon as possible. Reassurances should be given that staff would not be put in a worse-off position. In fact, LAA would have more flexibility in its employment package (e.g. it could offer encashment of benefits) and would offer a more independent and service-orientated working culture.

7.6 Staff should be encouraged to join LAA. Those who wished to remain as civil servants could be redeployed to the legal group of departments, subject to the availability of jobs and suitability of staff. Those who opted to retire would be compensated under the Pensions Ordinance. Consideration could also be given to providing a sign-up bonus for those who opted to join LAA within a certain period of time. They would also be able to retain their pension benefits. The Council believes that a smooth transition can be achieved with the positive efforts of all parties concerned.

Chapter Eight

Implementation

8.1 A new Ordinance would need to be drawn up to establish LAA. Similarly, the Legal Aid Ordinance and related rules would need to be amended to reflect the change.

8.2 Pending the formation of LAA, LASC could assist the Government in bringing the new organisation into existence in the following manner, though not exclusively :-

- (a) advising on the drafting instructions for the new LAA Ordinance.
- (b) advising on the amendment of the Legal Aid Ordinance and other regulations.
- (c) working out the new terms and conditions of employment for staff joining LAA.
- (d) designing the organisational set-up of LAA.
- (e) assessing the resource requirements of setting up LAA.
- (f) preparing for the disbandment of LASC.
- (g) opening a dialogue with DLS Council regarding enlargement of and cross-membership.

8.3 Once LAA is established, the LASC Ordinance should be repealed.

8.4 While the Government's decision on future arrangements is awaited, the Council will continue to work closely with LAD to ensure the public receives the highest quality of legal aid service.

Composition of LAA Board

Annex I

	<u>No.</u>	
A. Nominations from the following bodies		
1. The Hong Kong Bar Association	1	
2. The Law Society of Hong Kong	1	
3. Council of Duty Lawyer Service	1	
4. Consumer Council	1	(A) Government to accept nominations from these bodies. Members to be appointed by Chief Executive, Hong Kong SAR.
5. The Hong Kong Council of Social Service (welfare agency)	1	
6. Hong Kong Social Workers' Association (social worker)	1	
7. Hong Kong Society of Accountants	1	
B. Ad personam		
8. Management	1	
9. Academic in public & social administration.	1	
10. Chairman (lay person)	1	(B) and (C) Appointed by Chief Executive, Hong Kong SAR.
C. Ex-officio		
11. Chief Executive, LAA	1	
	Total :	<u>11</u>
Quorum : 6		

杜葉錫恩

ELSIE TU

OFFICE: 23422414

FAX: 23895048

Our Ref:

Minority Report - from Elsie TU

Your Ref:

55, Kung Lok Road,
Kwun Tong,
Kowloon.

Reasons for Choice of Option 1

A. Positive Reasons

1. The LASC has been in operation only two years and already has seen improvements in the services of the Legal Aid Department. (e.g. Social Welfare investigations, streamlining of applications, performance pledges, etc.)

More time should be allowed for further improvements.

2. Option 1 gives scope for further improvements when the LASC is beefed up by a professional secretariat.
3. Adopting Option 1 would boost up the morale of the Departmental staff and encourage them to make even greater efforts. Option 1 also implies a warning that further options in the Consultants' Report are possible, unless there are further improvements.
4. My minority report stipulates that there should be a review after two years to see if LASC/LAA should move up to Options 2 or 3.
5. It is better to improve the system we have unless we are absolutely sure that changes will serve the public better. There is no such assurance in the report.

B. Negative Reasons

1. There is no assurance that the staff will not come under pressure by changing the "boss", and they could come under pressure from other quarters than the LAA, in the present political environment.
2. There is no such thing as "independence" if an organisation has to look for funding from another quarter, in this case, the Government. Real independence would require the organisation to have its own funds, and there is no such organisation in sight at present.
3. If the independence lobbyists believe that the Government is already putting pressures on the Department, what makes them think that the Government would not continue to do so through funding? Finance is a very potent weapon, not at present used.
4. The argument that refusal for funds can be referred to the Finance Committee of the Legislative Council is flawed, because the Legislative Council has no power to pass bills or motions with financial implications. Only the Government can put

杜葉錫恩

ELSIE TU

OFFICE: 23422414

FAX: 23895048

Our Ref:

Your Ref:

55, Kung Lok Road,
Kwun Tong,
Kowloon.

-2-

forward requests for finance to the Finance Committee, and this is right, to maintain the balance of power on finance.

5. Even if such requests for finance could be moved by the Legislative Council, such requests would certainly be debated along political lines (as they sometimes are already), and the interests of the grassroots could be sacrificed for the sake of other, political issues.

Most of the supporters of an independent Legal Aid Authority in recent days seem to concentrate on human rights. That is fair enough, but there is a danger that public funds required for the defence of the less privileged of the population may be sought by political parties using low-income members to ensure eligibility to use Legal Aid services. There seems to be a need for a human rights commission to deal with those specific cases, and I would be in favour of that to deal with genuine cases of human rights abuses. However, that is not within the terms of reference of the LASC.

Elsie Tu

26 August 1998