

香港律師會的信頭

The Letterhead OF LAW SOCIETY OF HONG KONG

Our Ref :
Your Ref :
Direct Line : SG/FA/1062

2nd February, 1999

Mr. S. Y. Chan, JP.
Director of Legal Aid,
Legal Aid Department,
24th Floor, Queensway Government Offices,
66 Queensway,
Hong Kong.

Dear S.Y.

The Law Society Legal Aid Committee met on 18th January to discuss the revised proposal that you had made in relation to the enforcement under Section 19A of the Legal Aid Ordinance of your first charge on properties recovered for an aided person.

At the time of the last LegCo Panel Meeting your proposal was that you should be permitted by legislation to defer payment of profit costs due to a solicitor if the solicitor failed to remit any money received by him to the Director of Legal Aid in compliance with Section 19A(1) or to withhold such payment, subject to disciplinary proceedings having been brought against the defaulting solicitor by The Law Society.

Members of the Committee considered that this proposal was unsatisfactory for a variety of reasons. The most pertinent reason was that it linked failure to comply with Section 19A to disciplinary proceedings. Members of the Committee were of the view that even if failure to comply with Section 19A amounted to negligence it was unlikely that in most circumstances it would amount to professional misconduct giving rise to disciplinary proceedings.

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Members also took the view that in the event of a failure to deduct the first charge from the monies paid to the aided person there already is a remedy contained in Section 19A that provides that only the Director of Legal Aid can give a valid receipt for any monies paid to the aided person.

Comparison with the legislation in England & Wales had been made by the Administration. However, the procedures for application for legal aid and its management are wholly different in Hong Kong. The Director of Legal Aid has much greater control over the assignment of cases to solicitors and it is unlikely that any solicitor would risk the wrath of the Director and the likelihood of receiving no further legal aid cases by failing to ensure compliance with Section 19A.

The Law Society's underlying objection to the totality of this proposal notwithstanding that I now understand that you are no longer insisting upon the link with disciplinary proceedings, is that no evidence has been adduced to indicate that there is a very real problem that needs to be addressed. The Law Society has never received any complaint from the Legal Aid Department relating to the failure of solicitors to comply with the provision of Section 19A and we therefore do not believe that there is any need to change the Ordinance.

We are, of course, fully prepared to discuss this matter further and if there is any statistical information which shows that there is an existing problem in relation to this section then we shall be happy to discuss this but at present the views of The Law Society Legal Aid Committee are as set out above.

I have to qualify our response by saying that those views are those of the Legal Aid Committee because the matter has not been discussed by the Council of the Law Society. If you wish to pursue this proposal then I will ask the Council to express its views.

Yours sincerely,

Patrick Moss
Secretary General